(26,837)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 751.

THE PEOPLE OF THE STATE OF NEW YORK ON THE RELATION OF THE TROY UNION RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

G. FRANK MEALY, GEORGE SPENCE, JR., GEORGE B. WALKER, AND SILAS DOWNS, JR., AS ASSESSORS, AND HIRAM W. GORDINIER, AS COMPTROLLER, OF THE CITY OF TROY, STATE OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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a New York Court of Appeals.

THE PEOPLE ex Rel. N. Y. C. & H. R. R. R. Co., Appellant,

against

G. FRANK MEALEY and Others, as Assessors, Respondents.

THE PEOPLE ex Rel. TROY UNION RAILROAD COMPANY, Appellant,

against

THE SAME RESPONDENTS.

Return on Appeal.

Lewis E. Carr, Attorney for Appellant Troy Union Railroad Co., Albany, N. Y.
Visscher, Whalen & Austin, Attorneys for Appellant N. Y. C. & H. R. R. R. Co., Albany, N. Y.
Thomas H. Guy, Attorney for Respondents, Troy, N. Y.

Received and read October —, 1918.

——— ———,
Chief Judge Court of Appeals.

b Form 2.

Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the Court of Appeals, Held at Court of Appeals Hall, in the City of Albany, on the 12 day of July, in the Year of Our Lord One Thousand Nine Hundred and Eighteen, Before the Judges of said Court.

Witness, The Hon. Frank H. Hiscock, Chief Judge, presiding.
R. M. BARBER, *Clerk.*

Remittitur July 13, 1918.

c THE PEOPLE, &c., ex Rel. TROY UNION RAILROAD CO., Appellant,

agst.

G. FRANK MEALY & Ors., &c., Respondents.

Be it remembered, that on the 2nd day of January, in the year of our Lord one thousand nine hundred and eighteen, Troy Union

Railroad Co., the appellant in this action, came here into the Cou of Appeals, by Lewis E. Carr, its attorney, and filed in the said Cou a Notice of Appeal and return thereto from the judgment of the A pellate Division of the Supreme Court in and for the Third Judici Department. And G. Frank Mealy & Ors., &c., the respondents said action, afterward appeared in said Court of Appeals by Thom H. Guy their attorney.

Which said Notice of Appeal and the return thereto filed as afor said, are hereunto annexed.

d Whereupon, the said Court of Appeals having heard th cause argued by Mr. Lewis E. Carr of counsel for the appe lant, and by Mr. George B. Wellington of counsel for the respon ents, and after due deliberation had thereon, did order and adjud that the order of the Appellate Division of the Supreme Court a pealed from herein, be and the same hereby is affirmed with costs.

And it was also further ordered, that the record aforesaid, and th proceedings in this Court be remitted to the said Supreme Cour there to be proceeded upon according to law.

e Therefore, it is considered that the said judgment be i all things affirmed with costs as aforesaid, and stand in fu force, strength and effect.

And hereupon, as well the Notice of Appeal and return there aforesaid as the judgment of the Court of Appeals aforesaid, by i given in the premises, are by the said Court of Appeals, remitted in the Supreme Court of the State of New York, before the Justic thereof, according to the form of the statute in such case made an provided, to be enforced according to law, and which record now re mains in the said Supreme Court before the Justices thereof, &c.

R. M. BARBER,
Clerk of the Court of Appeals
of the State of New York.

Court of Appeals, Clerk's Office.

Albany, July 13, 1918.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the Court of Appeals, with the papers originally filed therein, attached thereto.

[SEAL.] R. M. BARBER, *Clerk.*

1 Supreme Court (Rensselaer County).

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of TROY UNION RAILROAD COMPANY, Relator-Appellant,

against

G. FRANK MEALY, GEORGE SPENCE, JR., GEORGE B. WALKER, and Silas Downs, Jr., as Assessors of the City of Troy, and Hiram W. Gordinier, as Comptroller of the City of Troy, New York, Defendants-Respondents.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Relator-Appellant,

against

THE SAME DEFENDANTS-RESPONDENTS.

Case on Appeal.

Statement under Rule 41.

The above entitled proceedings were instituted by the relator in each by certiorari to review an assessment of the property of the Troy Union Railroad Company in the city of Troy in and for the year 1911, in which the New York Central and Hudson River Railroad Company was designated as a party thereo. Writs of cer-

2 tiorari were issued on the application of the relators August 12th, 1911, which were duly served. The defendants answered and made returns to said writs. The proceedings were, by an order of the Supreme Court at Special Term, referred to Joseph A. Lawson, as referee, to take and report to the court the evidence produced before him with his conclusions thereon under section 293 of the Tax Law.

At the commencement of the hearing of the proceeding instituted by the New York Central and Hudson River Railroad Company May 15, 1912, it was stipulated that the proceeding instituted by the Troy Union Railroad Company should be heard therewith and the evidence introduced therein should apply to both cases with the right to either relator to introduce evidence additional to that introduced as applicable to both.

The referee made his report August 13, 1914, to the effect that the petitions should be dismissed and the writs of certiorari quashed in both cases, with costs. To his findings of fact and conclusions of law the relators filed exceptions.

The cases were heard on the referee's report and the evidence reported by him at Special Term before Justice Alden Chester. His decision consisting of findings of fact and conclusions of law was rendered January 27th, 1915, in and by which he directed that the petitions should be dismissed and the writs quashed in both cases.

To his findings of fact and conclusions of law the relators severally filed exceptions.

Final orders dismissing the petitions of the relators and quashing the writs of certiorari sued out by them, with costs, were entered in the office of the clerk of Rensselaer county March 12,
3 1915. From such final orders the relators respectively appealed to the Appellate Division of the Supreme Court.

Visscher, Whalen & Austin, whose office and post office address is 19 Tweddle Building, Albany, N. Y., are the attorneys for the relator, The New York Central and Hudson River Railroad Company.

Lewis E. Carr, whose office and post office address is Albany, N. Y., is the attorney for the relator, Troy Union Railroad Company.

Charles I. Webster, Corporation Counsel of the city of Troy, whose office and post office address is Troy, N. Y., is the attorney for the defendants.

There has been no change of parties and no amendment of the proceedings.

4 *Case and Exceptions.*

Supreme Court, Rensselaer County.

THE PEOPLE ex Rel. THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Relator;

THE PEOPLE ex Rel. TROY UNION RAILROAD COMPANY, Relator,

against

G. FRANK MEALY and Others, as Assessors, and HIRAM GORDINIER, as Comptroller, of the City of Troy, Defendants.

The following are copies of the petitions of the relators, orders for writs of certiorari to issue, writs of certiorari and returns thereto and orders of reference to take evidence and report it to the court with the conclusions of the referee thereon.

5 *Petition for Writ of Certiorari.*

Supreme Court, Rensselaer County.

THE PEOPLE OF THE STATE OF NEW YORK ex Rel. THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Relator,

against

G. FRANK MEALY, GEORGE SPENCE, JR., GEORGE B. WALKER, and Silas Downs, Jr., as Assessors, and Hiram W. Gordinier, as Comptroller, of the City of Troy, State of New York, Defendants.

To the Supreme Court of the State of New York:

The petition of The New York Central and Hudson River Railroad Company respectfully shows, upon information and belief:

First. That your petitioner at all of the times hereinafter mentioned was, and now is, a domestic railroad corporation, owning and operating a railroad which extends from the city of New York to the city of Buffalo, and which passes through the city of Troy, in the county of Rensselaer, in said state, and having in said city of Troy railroad tracks with appurtenances, necessary switches, sidings and certain small structures provided for and used in connection with the operation of said railroad in said city.

Second. That the first four defendants above-named, at all
6 of the times hereinafter mentioned were, and now are, the duly elected, qualified and acting assessors of the city of Troy, and that, in the course of their duties as such assessors, they prepared an assessment roll of the real and personal property in said city, for the purposes of taxation, for the year 1911, and they on or about the 8th day of July, 1911, placed the same in the hands of their clerk, Robert A. Patchke, for public inspection.

Third. That upon said assessment roll said assessors assessed to your petitioner property and placed the valuation thereof on said roll as follows:

"Third Ward.—Troy Union Railroad Company, Boston & Maine Railroad Co., Delaware & Hudson Co., New York Central and Hudson River Railroad Co., interest of all and each as the same may appear in lands and road-bed and adjacent thereto in the several wards of the city, with rails, superstructures, depot, building and appurtenances, being all the railroad property in the city of Troy, located between Madison street on the south, Hoosick street on the north, and the approach of the Delaware & Hudson Co., on the west, excepting that portion assessed as franchises lying in public streets. Valuation, $1,000,000."

Fourth. That said assessment, so made against your petitioner, as aforesaid, is illegal, erroneous, unequal, unjust and inequitable for the following reasons, viz.:

1. Your petitioner at no time has been, and is not now, the owner

of the real estate mentioned and described in said assessment, nor in the possession or occupation of the same or any part thereof as owner.

2. Your petitioner at no time has been, and is not now, the owner of any interest in or to any part of the real estate upon which said assessment was thus imposed.

7 3. The real estate described in said assessment, in which an interest was so assessed to your petitioner, at the time when said assessment was so made, was and now is, owned by The Troy Union Railroad Company, a domestic corporation located in said city of Troy, which then was, and now is, in the possession of said real estate, and is taxed on the assessment roll of said city of Troy in the way and to the extent and in the manner that said last mentioned corporation is taxable by virtue of a contract existing between said city of Troy and said The Troy Union Railroad Company, as ratified by an act of the legislature of the State of New York, constituting chapter 462 of the laws of 1853, by the terms of which said contract and said act of said legislature, the real estate of said The Troy Union Railroad Company at all times has been, and now is, exempt from assessment for the purposes of taxation in said city of Troy to any amount in excess of the capital stock of said Troy Union Railroad Company, which at all times has been, and now is, the sum of thirty thousand dollars ($30,000.00).

4. The real estate described in said assessment, in which an interest is assessed on said roll to your petitioner, was constructed by said The Troy Union Railroad Company, in accordance with said contract and said act of the legislature, and at all times since has been maintained by said The Troy Union Railroad Company, which at all times has exercised care and supervision thereover, to the end that the same should be kept in suitable and proper repair.

Fifth. That said assessment, thus made against several different corporations, as the interest of each and all may appear, is not

8 in accordance with the provisions of statute which require said assessment to be made against the owner or owners of the property assessed.

Sixth. That in reliance upon said exemption to which the city of Troy and The Troy Union Railroad Company, with others, agreed, by virtue of said contract, which was dated the 3d day of December, 1852, the railroad and station, included in said assessment, were constructed by The Troy Union Railroad Company, which has ever since maintained the same, and has in all respects performed all that was required by said contract to be performed by it, and has earned and is entitled to all the benefits expressed in and secured by said contract, among which was the exemption of the property which is the subject of the assessment above specified, for the purposes of taxation in said city of Troy and the county of Rensselaer, to any amount in excess of the capital stock of said The Troy Union Railroad Company.

Seventh. That on the 21st day of July, 1911, at said city of Troy, your petitioner duly appeared by its duly authorized agent and attorney, and filed with said assessors a protest against such assessment, and requested said assessors then and there to correct the said assess-

ment, by cancelling the same as to your petitioner, or by reducing the amount thereof to the sum of thirty thousand dollars ($30,000.00), but said assessors refused to entertain such protest, or grant said application, and illegally, erroneously and unjustly retained upon the said assessment roll of said city of Troy, for the year 1911, said assessment against your petitioner, in the form above set forth, at the amount at which the same was originally assessed, to
9 wit, one million dollars ($1,000,000.00) and illegally, erroneously and unjustly refused to strike said assessment from said roll.

Eighth. That said assessors thereafter completed said assessment roll and, on the 28th day of July, 1911, made and subscribed the oath specified by law thereto, and filed said assessment roll, so completed and verified by them, with the above-named defendant Gordinier, as comptroller of said city of Troy, and thereupon published notice of such final completion and filing of said roll, and your petitioner will be injured and prejudiced by said assessment, in that it will be required to pay taxes levied upon said assessment of one million dollars ($1,000,000.00), so illegally, erroneously and unjustly placed and retained upon said roll.

Ninth. That the time within which your petitioner may apply for a writ of certiorari to review such assessment will expire on the 12th day of August, 1911, by reason whereof your petitioner asks for such a writ, for which no previous application has been made, without notice of a motion therefor.

Wherefore, your petitioner prays that a writ of certiorari may issue out of and under the seal of this court, directed to the above-named defendants, to review said assessment of said property, on the grounds set forth in this petition, which writ shall provide that a return by said assessors shall be made at a time to be fixed in the order granting the same, to the end that, if it shall appear that the said assessment is, for any reason, illegal, or erroneous or unequal, the court may order such assessment, if illegal, to be stricken from the roll, or, if erroneous or unequal, to be corrected and reassessed, in whole or in part, in such manner as shall be in accordance
10 with law, and shall make said assessment conform to the valuations and assessments of other property upon said roll, and secure equality of assessment, and that your petitioner may have such other and further relief as may be just and proper.

Dated, Albany, N. Y., August 9, 1911.

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
By FRED F. WENDELL,
As Its Land and Tax Agent.
VISSCHER, WHALEN & AUSTIN,
Attorneys for Relator.

Office and Post Office Address, 19 Tweddle Building, Albany, N. Y.

STATE OF NEW YORK,
County of Albany, ss:

Fred F. Wendell, being duly sworn, deposes and says that he is one of the land and tax agents of the petitioner above named; that he has read the foregoing petition, the contents whereof he knows; and that said petition is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true. That the reason why this verification is made by deponent is because the relator herein is a domestic corporation. That the grounds of deponent's belief, as to all matters in said petition not stated upon his knowledge, are information which has come to deponent in the regular course of his duties as such land and tax agent.

FRED F. WENDELL.

Subscribed and sworn to before me, this 9th day of August, 1911.
G. MALCOM SAND,
Notary Public, Albany County, N. Y.

11 *Order for Writ to Issue.*

Supreme Court, Rensselaer County.

THE PEOPLE OF THE STATE OF NEW YORK ex Rel. THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Relator,

against

G. FRANK MEALY, GEORGE SPENCE, JR., GEORGE B. WALKER, and Silas Downs, Jr., as Assessors, and Hiram W. Gordinier, as Comptroller, of the City of Troy, State of New York, Defendants.

On reading and filing the annexed petition of The New York Central and Hudson River Railroad Company, bearing date and duly verified August 9, 1911,

Now, on motion of Visscher, Whalen & Austin, as attorneys for said relator, it is

Ordered, that a writ of certiorari, as asked in said petition, be issued out of and under the seal of this court, directed to said G. Frank Mealy, George Spence, Jr., George B. Walker and Silas Downs, Jr., as assessors, and to said Hiram W. Gordinier, as comptroller of the city of Troy, State of New York; that said writ be returnable at the Special Term of the Supreme Court appointed to be held in and for the county of Albany, at the City Hall, in the city of Albany, on the 9th day of September, 1911; that said writ be allowed
12 and be signed and sealed by the clerk of this court in and for the county of Rensselaer, and that a copy of the return herein be served upon Visscher, Whalen & Austin, as attorneys for said relator, within twenty days after the service of this writ, with notice

for the application of which the court, in its discretion, hereby dispenses.

Dated, August 12, 1911.

W. O. HOWARD,
Justice Supreme Court.

Writ of Certiorari.

The People of the State of New York to G. Frank Mealy, George Spence, Jr., George B. Walker, and Silas Downs, Jr., as Assessors, and Hiram W. Gordinier, as Comptroller, of the City of Troy, State of New York:

Whereas, we have been informed by the duly verified annexed petition of The New York Central and Hudson River Railroad Company, a domestic corporation, that such proceedings have been had by you, as such assessors of the city of Troy, in the county of
13 Rensselaer; that in the course of your duties, as such assessors, you have prepared, completed and filed an assessment roll of property in the city of Troy, for the purposes of taxation for the year 1911, upon which roll property has been assessed against said petitioner, and the valuation thereof has been placed by you upon said roll, as follows:

"Third Ward.—Troy Union Railroad Company, Boston & Maine Railroad Co., Delaware & Hudson Co., New York Central and Hudson River Railroad Co. Interest of all and each as the same may appear in lands and roadbed and adjacent thereto in the several wards of the city, with rails, superstructures, depot, buildings and appurtenances, being all the railroad property in the city of Troy, located between Madison St. on the south, Hoosick St. on the north, and the approach of the Delaware & Hudson Co. on the west, excepting that portion assessed as franchises lying in public streets. Valuation, $1,000,000."

And whereas, it appears to us by said petition that said assessment is illegal, erroneous, unjust and inequitable, because said relator is not the owner of said property, nor any part thereof, but that said property is owned wholly and entirely by The Troy Union Railroad Company, and it further appears that said relator will be prejudiced, aggrieved and injured by reason of said assessment, because such assessment is contrary to the terms of a contract made between said city of Troy and The Troy Union Railroad Company, bearing date December 3rd, 1852, and appeared by chapter 462 of the Laws of 1853, which exempted all property of The Troy Union Railroad Company from assessment in said city of Troy, for the pur-
14 poses of taxation, beyond the amount of the capital stock of the company last aforesaid, which at all times has been, and now is thirty thousand dollars ($30,000); and

Whereas, it appears that on the 21st day of July, 1911, said petitioner applied to you in due and proper form to cancel and strike said assessment from said roll, or to correct and reduce the same to the sum of thirty thousand dollars ($30,000), but that, nevertheless, you refused to comply with such application, and completed and de-

livered said roll to the above-named Hiram W. Gordinier, as comptroller of the city of Troy, in whose custody said roll now is.

Now, therefore, we command you, and each of you, that you certify and return to the Supreme Court, at a Special Term thereof appointed to be held in and for the county of Albany, at the City Hall, in the city of Albany, on the 9th day of September, 1911, at the opening of court on that day, or as soon thereafter as counsel can be heard, the assessment roll of said city of Troy, so completed and delivered to said comptroller thereof on the 28th day of July, 1911, or certified or sworn copies thereof, together with such records, proceedings and papers, or sworn or certified copies thereof, as were had before and were considered by you in making such assessment, and in passing upon the application of said petitioner for the cancellation or reduction thereof; and such other facts as may be pertinent and material to show the ownership of the property so assessed against said petitioner, and why such assessment, as placed upon said roll, should not be cancelled and stricken therefrom; and that you also return to said court, at the time and place aforesaid, the verified statement filed in behalf of said petitioner, in support of
15 its application to cancel or reduce said assessment to the end that the court may thereon cause to be done what of right and justice should be done.

And we further command that you serve upon Visscher, Whalen & Austin, as attorneys for the petitioner herein, on or before the 29th day of August, 1911, a copy of your said return to this writ.

Witness, Hon. Wesley O. Howard, a justice of our Supreme Court, on the 12th day of August, 1911.

[SEAL.] F. S. COTE, *Clerk*,
VISSCHER, WHALEN & AUSTIN,
Attorneys for Relator.

Office and Post Office Address, 19 Tweddle Building, Albany, N. Y.

The foregoing writ is allowed this 12th day of August, 1911.

W. O. HOWARD,
Justice Supreme Court.

16 *Petition for Writ of Certiorari.*

Supreme Court, Rensselaer County.

In the Matter of the Application of THE TROY UNION RAILROAD COMPANY for a Writ of Certiorari to G. Frank Mealy, George Spence, Jr., George B. Walker and Silas Downs, Jr., as Members of and constituting the Board of Assessors of the City of Troy, N. Y., and Hiram W. Gordinier, Comptroller of the City of Troy, N. Y.

To the Supreme Court of the State of New York:

The petition of the Troy Union Railroad Company respectfully shows to the court:

1. That your petitioner is a domestic corporation duly created and organized under the laws of the State of New York.

2. That during all the times mentioned herein G. Frank Mealy, George Spence, Jr., George B. Walker and Silas Downs, Jr., were and still are general assessors of the city of Troy, N. Y., and as such constituted the board of assessors of said city. That Hiram W. Gordinier has been at all of the times hereinafter mentioned and is now the comptroller of the city of Troy, and that he and said board of assessors have been and are respectively clothed with all
17 the powers and charged with all the duties which are prescribed by law with reference to their respective offices.

3. That said board of assessors in the performance of the duties devolving upon it prepared an assessment roll for the purposes of taxation in and for the city of Troy, N. Y., for the year 1911, and have finally completed the same and duly verified said roll on or about the 28th day of July, 1911, and have deposited the same with the comptroller of the city of Troy on that date, and thereupon posted the notices of such completion and filing as approved by law.

4. That upon said assessment roll said board of assessors in the Third Ward of the city of Troy have assessed the Troy Union Railroad, the Boston and Maine Railroad, the Delaware and Hudson Company and the New York Central and Hudson R. R. R. Co. for the interest of all and each as the same may appear in the lands of roadbed and adjacent thereto in the several wards of the city, with rails, superstructures, depot buildings and appurtenances, being all of the railroad property in the city of Troy located between Madison St. on the south, Hoosick St. on the north, and the approach of the Delaware and Hudson Company's bridge on the west, excepting that portion assessed as franchises lying in public streets, at the sum of $1,000,000.

That said assessment is unlawful, erroneous and illegal and should, therefore, be cancelled and stricken from said assessment roll for the reasons hereinafter stated. That the property above described is the property of the Troy Union Railroad Company and is not the property of the Boston and Maine Railroad, the Delaware and Hudson Company and the New York Central and Hudson
18 River Railroad Company, and none of said companies, except the Troy Union Railroad Company, has an interest in said property as an owner thereof, except such interest as they may have as stockholders of the Troy Union Railroad Company, and for this reason the said assessment is illegal and improper in form and substance.

That said companies have no interest in said company which is subject to taxation by the assessors of the city of Troy as owner or otherwise, except the Troy Union Railroad Company.

That the said assessment is illegal because the said board of assessors in said assessment has not as is required by law designated the owners, occupants and property rights of the several companies against which assessment is levied and the manner of levying said assessment is illegal, erroneous and unlawful.

That the said assessment is eroneous, illegal and unlawful and

excessive for the reason that the laws of the State of New York limit the amount at which the property above described can be valued for the purpose of taxation, said property being the property of the Troy Union Railroad Company and no others.

That the Troy Union Railroad Company and the city of Troy executed in December, 1851, a contract exempting said property from taxation beyond the amount of the capital stock of said Troy Union Railroad Company which is now and always has been $30,000.

By the laws of the State of New York heretofore enacted and now in force, it is provided that the total assessment of the property of the Troy Union Railroad Company of every name and nature for the purpose of taxation shall not exceed the amount of the capital stock of said company which is now and always has
19 been $30,000.

That the said contract and the said laws of the State of New York are binding upon the city of Troy in the levying of said assessment and could not be impaired by any subsequent legislation, and that any act thereafter passed affecting the said contract or repealing or attempting to repeal said laws of the State of New York was unconstitutional, illegal and void.

That the amount of the taxable property assessed in excess of the said sum of $30,000 upon any property whatever, belonging to the Troy Union Railroad Company by said board of assessors, or any other board of the state, county or city assessors having charge of the assessment of said property, is illegal and void for the reasons heretofore and hereafter stated.

That the State Board of Tax Commissioners of the State of New York have assessed part of said property as special franchises at the sum of $215,400, and that the said property above described has been included by the said State Board of Tax Commissioners within the said special franchise assessment as part of the tangible property therein assessed, and said assessment for the year 1911 of the said property by the board of assessors of the city of Troy is illegal and void because the said assessment herein is a double assessment, the same property above described being included in the assessment made by said board of assessors of the city of Troy and the taxable property included in the said special franchise valuation, and said assessment of said property would result in double taxation.

That the said assessment and valuation is illegal, erroneous and excessive for the reason that it is unequal in that it has been
20 made at a higher proportionate valuation than the assessment of any and all other real estate in the city of Troy, and in that it has been made at what purports to be its full value, whereas all other property in the city of Troy is assessed at much less than its full value as this relator is informed and verily believes.

5. That the said board of assessors, after making the assessment hereinbefore mentioned, published a notice that said assessment roll for the year 1911 was open for inspection and correction and upon the application of the parties considering themselves aggrieved,

which notice contained a statement of the time and place at which they would hear such grievances. That pursuant to such notice and within the time and at the place therein stated your petitioner duly appeared before said board of assessors, complained of said assessment and requested that the same be cancelled and stricken from the roll, which complaint and request were in writing, duly verified, in which were stated the grounds of such application, which grounds were as hereinbefore set forth, to which your petitioner prays leave to refer as a part of its petition. That your petitioner offered at such time and place to prove in such manner as the said board of assessors might require the allegations contained in said complaint, so filed, with them, but no other further proof was required by them. That said assessors, notwithstanding such application and complaint on the part of your petitioner, refused to entertain the same and erroneously and illegally retained said assessment upon the assessment roll of the city of Troy for the year 1911 against your petitioner at the amount at which it was originally assessed thereon, to wit, $1,000,000, and erroneously and
21 illegally refused to cancel and strike the same from said roll for the reasons hereinbefore stated.

That upon the assessments contained in said roll the taxes for the state, city and county purposes for the year 1911 will be levied and that your petitioner will be injured and prejudiced in that it will be required to pay with said other railroad companies the tax levied upon said assessment of $1,000,000 against it, which was erroneously and illegally placed on said roll and retained thereon, notwithstanding the complaint of your petitioner.

6. That said board of assessors thereafter completed said assessment roll and on the 28th day of July, 1911, made and subscribed the oath required by law thereto and filed said assessment roll so completed and verified by them, with the comptroller of said city. That they thereupon published notices of such final completion and filing of said roll. That the time within which your petitioner may apply for a writ of certiorari to review such assessment will expire on the 12th day of August, 1911, which is stated as a reason for applying for such writ without notice of motion therefor, and that no other or previous application for the writ of certiorari to review said assessment has been made by your petitioner.

Wherefore, your petitioner prays that a writ of certiorari issue out of and under the seal of this court, directed to the said G. Frank Mealy, George Spence, Jr., George B. Walker and Silas Downs, Jr., as general assessors of the city of Troy and constituting the board of assessors of that city, and Hiram W. Gordinier, as comptroller of said city, commanding them as such assessors and comptroller
22 to certify and return to this court the tax or assessment rolls of said city of Troy as finally completed and delivered to the comptroller of said city of Troy on the 28th day of July, 1911, or certified or sworn copies thereof, and also to certify and return such records, proceedings and papers, or sworn or certified copies thereof, which were had before them in the making of said assessment, or on the review thereof upon the complaint of the petitioner herein and

such other facts as may be pertinent and material to show the ownership of the property so assessed, together with the application of the petitioner herein for the cancellation of said assessment to the end that the action of said board of assessors in assessing your petitioner upon the real estate described in said roll as set forth in the petition herein with said other railroad companies at the sum of $1,000,000, may be reviewed and corrected on the merits by this court and that the assessment may be cancelled and stricken from said assessment roll.

And your petitioner further prays that the illegal and erroneous tax which your petitioner may be required to pay may be refunded to your petitioner and that your petitioner may have such other and further relief as to the court may seem just and equitable.

TROY UNION RAILROAD COMPANY,
By F. A. HARRINGTON, *Manager.*

LEWIS E. CARR,
Attorney for Petitioner.

STATE OF NEW YORK,
County of Albany, ss:

F. A. Harrington, being duly sworn, says he is the manager of the above-named petitioner; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

He further says that this verification is made by him and not by the petitioner, for the reason that the petitioner is a corporation, and he is an officer thereof, to-wit, manager.

F. A. HARRINGTON.

Subscribed and sworn to before me this 10th day of August, 1911.
F. E. HALL,
Notary Public, Albany Co., N. Y.

24 *Order for Writ to Issue.*

At a Special Term of the Supreme Court Held in and for the Third Judicial District, at the Supreme Court Chambers, in the Courthouse, in the City of Troy, N. Y., on the 12th Day of August, 1911.

Present: Hon. Wesley O. Howard, Justice.

Supreme Court, Rensselaer County.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of the TROY UNION RAILROAD COMPANY, Relator,

against

G. FRANK MEALY, GEORGE SPENCE, JR., GEORGE B. WALKER, and Silas Downs, Jr., General Assessors of the City of Troy and Constituting the Board of Assessors of said City, and Hiram W. Gordinier, Comptroller of the City of Troy, N. Y., Defendants.

On reading and filing the verified petition of The Troy Union Railroad Company, the above-named relator, and on motion of Lewis E. Carr, counsel for said relator, the facts stated in said petition justifying this application, without notice,

It is ordered, that a writ of certiorari issue out of and under the seal of this court returnable at a Special Term thereof to be
25 held at the City Hall in the city of Albany on the 9th day of September, 1911, at the opening of court on that day or as soon thereafter as counsel can be heard, directed to the above-named defendants, G. Frank Mealy, George Spence, Jr., George B. Walker and Silas Downs, Jr., as general assessors of the city of Troy, N. Y., and constituting the board of assessors of said city, and Hiram W. Gordinier, comptroller of the city of Troy, commanding them and each of them to certify and return to this court at such special term the tax or assessment rolls of the city of Troy, N. Y., for the year 1911, as completed and delivered to the comptroller of said city on the 1st day of August, 1911, with all other proceedings with reference to and in connection with the assessment of the above-named relator with other railroad companies on said rolls at the sum of $1,000,000, for certain real estate therein described, together with all of the papers had before and considered by them in connection with the making of such assessment and the hearing of the application of the above-named relator for the cancellation of the same, and to also certify and return to said special term all other matters and facts had before and considered by them in any manner relating to or connected with the making of said assessment.

WESLEY O. HOWARD,
Justice Supreme Court.

Enter in Rensselaer County.

26 *Writ of Certiorari.*

Supreme Court, Rensselaer County.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of the TROY UNION RAILROAD COMPANY, Relator,

against

G. FRANK MEALY, GEORGE SPENCE, JR., GEORGE B. WALKER, and Silas Downs, Jr., General Assessors of the City of Troy and Constituting the Board of Assessors of said City, and Hiram W. Gordinier, Comptroller of the City of Troy, N. Y., Defendants.

The People of the State of New York:

To G. Frank Mealy, George Spence, Jr., George B. Walker and Silas Downs, Jr., as assessors of the city of Troy, N. Y., and constituting the board of assessors of said city, and Hiram W. Gordinier, comptroller of said city.

Whereas, we have been informed by the petition of The Troy Union Railroad Company, a domestic corporation, that said petitioner claims to be aggrieved and injured by an illegal, erroneous and unequal valuation and assessment at the amount of $1,000,000, made by you for the year 1911, and of the grounds upon which such claim is based and sufficient reasons appearing from said petition for the granting of this writ.

27 We therefore command you, and each of you, that you certify and return to the SupremeCourt at a Special Term thereof to be held at the City Hall in the city of Albany, N. Y., on the 9th day of September, 1911, at the opening of court on that day, or as soon thereafter as counsel can be heard, the tax or assessment rolls of the said city of Troy, N. Y., completed and delivered to the comptroller of the said city on or about the 28th day of July, 1911, or certified or sworn copies thereof. Also to certify and return such proceedings and papers, or sworn or certified copies thereof as were had before and considered by you in making such assessment and in determining the application for the cancellation thereof, and such other facts as may be pertinent and material to show the ownership of the property so assessed to the relator and why the assessment of the relator's property as stated on said roll and in the petition herein should not be cancelled and stricken from the record, and also to return to said court the verified statements filed on behalf of the relator in support of its application to cancel and strike said assessment from the assessment roll, and all other papers and records bearing upon said assessment and said application for its cancellation or reduction, or sworn or certified copies thereof to the end that the court may thereon cause to be done what of right and justice should be done.

And we further command you that you serve a copy of your said return upon the attorney for the petitioner on or before the 30th day of August, 1911.

28 Witness: Hon. Wesley O. Howard, one of the justices of the Supreme Court, at the city of Troy, on the 12th day of August, 1911.

[SEAL.] F. S. COTE, *Clerk.*

LEWIS E. CARR,
Attorney for Relator,
56 North Pearl St., Albany, N. Y.

The foregoing writ is allowed this 12th day of August, 1911, at Troy, N. Y., in the Third Judicial District.

WESLEY O. HOWARD,
Justice Supreme Court.

29 *Return to Writ.*

Supreme Court, Rensselaer County.

THE PEOPLE ex Rel. THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD CO.

against

G. FRANK MEALY, GEORGE SPENCE, JR., GEORGE B. WALKER, and Silas Downs, Jr., General Assessors of the City of Troy and Constituting the Board of Assessors of said City, and Hiram W. Gordinier, Comptroller of the City of Troy, N. Y., Defendants.

The above-named defendants for a return to the writ of certiorari and for an answer to the petition herein, deny the allegations contained in the third section of the petition.

The assessment made by the assessors omitted the words "interest of all and each as the same may appear in"

Said defendants deny the allegation contained in the 4th section of the petition.

The defendants deny the allegations contained in the 5th section of the petition.

The defendants deny the allegations contained in the 6th section of the petition.

The defendants deny the allegations contained in the 7th section of the petition.

30 The defendants deny the allegations contained in the 8th section of the petition to the effect that the relator will be injured and prejudiced by the assessment made.

Further answering said petition and as a defense thereto, the defendants allege that heretofore in proceedings for a review of assessments in prior years, there have been duly entered orders, dismissing said proceedings upon findings to the effect that the relator was the owner of an undivided share of the real estate in question. Said proceedings were between the same parties as in this proceeding. Said orders are res judicata.

Further answering the petition, the defendants allege that chapter 462 of the laws of 1853 relating to the taxation of the property of the Troy Union Railroad Company was duly repealed by chapter 201 of the laws of 1909.

Wherefore the defendants demand judgment that the proceeding be dismissed with costs.

G. B. WELLINGTON,
Corporation Counsel and Attorney for Defendants,
City Hall, Troy, N. Y.

TROY, N. Y.,
County of Rensselaer, ss:

G. Frank Mealey, being duly sworn, says that he is one of the above-named defendants and is acquainted with the facts set forth in the foregoing return and answer and the same is true to the deponent's own knowledge, excepting as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

G. FRANK MEALY.

Sworn to before me, this 25th day of August, 1911.
OWEN D. CONNOLLY,
Notary Public.

31 Supreme Court, Rensselaer County.

THE PEOPLE ex Rel. THE TROY UNION RAILROAD COMPANY

against

G. FRANK MEALY, GEORGE SPENCE, JR., GEORGE B. WALKER, and SILAS DOWNS, JR., General Assessors of the City of Troy and Constituting the Board of Assessors of said City, and Hiram W. Gordinier, Comptroller of the City of Troy, N. Y. Defendants.

The above-named defendants for a return to the writ of certiorari and for an answer to the petition herein, deny the allegations contained in the fourth section of the petition.

Said defendants deny the allegations contained in the fifth section of the petition, excepting only that they admit that the relator appeared before the assessors and demanded a cancellation of the assessment. Further answering said petition and as a defense thereto the defendants allege that heretofore in proceedings for a review of assessment in prior years, there have been duly entered orders dismissing said proceedings upon findings to the effect that the form of assessment adopted was valid and legal, which said form was similar to that employed by the assessors for the year 1911. Said

32 proceedings were between the same parties as in this proceeding and said orders are res judicata.

Further answering the petition, the defendants allege that chapter 462 of the Laws of 1853, relating to the taxation of the property

of The Troy Union Railroad Company was duly repealed by chapter 201 of the laws of 1909.

Wherefore, the defendants demand judgment and that the proceedings herein be dismissed with costs.

G. B. WELLINGTON,
Corporation Counsel and Attorney for Defendant,
City Hall, Troy, N. Y.

TROY, N. Y.,
County of Rensselaer, ss:

G. Frank Mealy, being duly sworn, says that he is one of the above-named defendants and is acquainted with the facts set forth in the foregoing return and answer and the same is true to the deponent's own knowledge, excepting as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

G. FRANK MEALY.

Sworn to before me, this 22d day of August, 1911.
ROBERT A. PATCHKE,
Notary Public, Rens. County, N. Y.

33 *Order of Reference.*

At a Special Term of the Supreme Court Held in and for the County of Albany, at the County Building, in the City of Albany, N. Y., on the 25th Day of March, 1912.

Present: Hon. Alden Chester, Justice.

Supreme Court, Rensselaer County.

PEOPLE OF THE STATE OF NEW YORK ex Rel. NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Relator,

against

G. FRANK MEALY and Others, as Assessors, and HIRAM W. GORDINIER, as Comptroller, of the City of Troy, State of New York, Defendants.

Upon reading and filing the annexed stipulation of the attorneys for the respective parties to the above-entitled proceeding, and also the declination of John E. Kelly, Esq., of Troy, N. Y., to act as referee in the above proceedings, it is hereby

Ordered, that as provided by section 293 of the tax law, Joseph A. Lawson, Esq., of Albany, N. Y., be and he hereby is appointed a referee to take the evidence upon the issues in said proceedings, and report the same to the court, with his findings of fact

and conclusions of law. Referee may sit in Albany County as well as Rensselaer County.

Enter in Rensselaer County.

ALDEN CHESTER,
Justice Supreme Court.

Supreme Court, Rensselaer County.

PEOPLE OF THE STATE OF NEW YORK ex Rel. NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Relators,

against

G. FRANK MEALY and Others, as Assessors, and HIRAM W. GORDINIER, as Comptroller, of the City of Troy, State of New York, Defendants.

It is hereby stipulated by and between the attorneys for the respective parties that the above-entitled proceedings to review the assessments against railroad properties in Troy, N. Y., for the year 1911, be referred to Joseph A. Lawson, Esq., of Albany, N. Y., in the place of John E. Kelly, Esq., of Troy, N. Y., heretofore appointed referee in the above proceedings, said Kelly having declined the appointment, said referee to take the evidence upon the issues in said proceedings and report the same to the court with his findings of fact and conclusions of law.

Dated, March 20th, 1912.

CHAS. I. WEBSTER,
Attorney for Defendants.
VISSCHER, WHALEN & AUSTIN,
Attorneys for Relators.

Supreme Court, Rensselaer County.

PEOPLE OF THE STATE OF NEW YORK ex Rel. NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Relators,

against

G. FRANK MEALY and Others, as Assessors, and HIRAM W. GORDINIER, as Comptroller, of the City of Troy, State of New York, Defendants.

I, John E. Kelly, of Troy, N. Y., having been heretofore appointed referee in the above-entitled proceedings, do hereby decline the said appointment, for the reason that I am at the present time a stockholder in the New York Central and Hudson River Railroad Company, and do not feel that I should accept an appointment as referee in the above proceedings.

Dated, March 20th, 1912.

JOHN E. KELLY.

36 *Stipulation.*

Supreme Court.

PEOPLE ex Rel. TROY UNION RAILROAD COMPANY

against

G. FRANK MEALY and Others, Assessors of the City of Troy, and Another.

Proceeding to review assessment for the year 1911.

It is stipulated that the issue as to the validity of chapter 201, Laws of 1909, in the above-entitled proceeding, brought to review the assessment against certain railroad properties in the city of Troy, for the purposes of taxation, for the year 1911, shall abide as to that issue the result of the proceeding instituted by New York Central and Hudson River Railroad Company to review the assessment against the same railroad properties in the city of Troy for the purposes of taxation for the year 1911, which said proceeding is now at issue and is pending before Joseph A. Lawson, Esq., referee, in case said issue is therein passed upon and determined by the court of last resort reviewing said cause. Either party may apply to the court upon due notice for a final order in this proceeding upon this stipulation.

Dated, May 7th, 1912.

LEWIS E. CARR,
Relator's Attorney.
C. I. WEBSTER,
Corporation Counsel and Defendants' Attorney.

37 The hearing in the case in which The New York Central and Hudson River Railroad Company was relator commenced before Joseph A. Lawson, the referee, at his office in the city of Albany, N. Y., May 3d, 1912, and the following proceedings were then and on subsequent days had.

Appearances:

Lewis E. Carr, for the Troy Union Railroad Company.

William L. Visscher, for The New York Central and Hudson River Railroad Company.

Charles I. Webster, Corporation Counsel of the city of Troy, with George B. Wellington, counsel, for the defendants.

Referee files oath.

It is stipulated that the case of the People ex rel. the Troy Union Railroad Company against the same defendants shall be tried with the present case, and the evidence introduced applicable to both shall be considered as taken in both cases, with the right to put in such additional evidence by either one of the relators as may not be quite

proper to the case of the other, and that an order to that effect
entered.

It is also stipulated that the evidence shall be considered as take
in both cases, with the right stated in the previous stipulation.

It is conceded that the Rensselaer & Saratoga Railroad Compan
was organized by Chapter 131 of the Laws of 1832 and construct
its railroad in the City of Troy, and that on May 1st, 1871, its ro
was leased to the Delaware & Hudson Company, by the name of t
President, managers and Company of the Delaware & Hudso
38 Canal Company, which company has since that time operate
the railroad, and continues to operate it, the name of whi
was, by Chapter 469 of the Laws of 1899, changed to the Delawa
& Hudson Company.

It is also stipulated that the charter of the Rensselaer & Sarato
Railroad Company has been duly extended for 500 years.

Mr. Carr: I offer in evidence Chapter 131 of the Laws of 183
an act incorporating the Rensselaer & Saratoga Railroad Compan
not to become a part of the record, but for the purpose of referen
by either side.

Same received in evidence.

Mr. Carr: I also offer in evidence the lease from the Rensselae
& Saratoga Railroad Company to the Delaware & Hudson Compan
made May 1st, 1871.

Same received in evidence. It may be referred to without repr
duction in the record.

Mr. Carr: I offer in evidence Chapter 255 of the Laws of 185
which was an act to authorize the City of Troy and certain railro
corporations to subscribe for and become the owners of stock for t
construction of a railroad through the whole or some portion of t
City of Troy.

Same received in evidence.

Following is a copy of the same:

"An Act to Authorize the City of Troy and Certain Railroad Corp
rations to subscribe for and Become the Owners of Stock for t
Construction of a Railroad Through the Whole or Some Portio
of the City of Troy, Passed June 20, 1851, 'Three-fifths Bein
Present.'

The People of the State of New York, represented in Senate an
Assembly, do enact as follows:

39 Sec. 1. The corporation of the city of Troy, and the sever
railroad corporations whose railroads now or hereafter sha
come to the city of Troy, or which have or shall have their busine
terminus in, or run their trains to and from said city, may subscri
for and become the owners of stock in a railroad corporation to b
organized under the act entitled, 'An act to authorize the formatio

f railroad corporations and to regulate the same,' passed April sec-nd, one thousand eight hundred and fifty, for the construction of railroad, with one or more tracks, through the whole or a portion f said city; but there shall not be more than one railroad through hat part of the city of Troy lying between Adams and Federal treets. The corporation of the city of Troy shall not subscribe for r take more than one-fourth part of the capital stock of the corpora-ion to be organized.

Sec. 2. The corporation of the city of Troy is hereby authorized o borrow, upon the bonds of said city, redeemable in not more than wenty years, at an annual interest of six per cent., a sum not ex-eeding the cost of the construction of such railroad; but no bonds hall be issued therefor by the corporation of said city until said cor-oration shall, by the several railroad corporations which are au-horized to subscribe for stock by the first section of this act, and also y a mortgage on the railroad so to be constructed, its capital stock nd franchises, be fully indemnified and made harmless against the ayment of any bonds and the interest thereon which said city of Troy may issue under the authority of this act.

Sec. 3. All railroads which now or hereafter shall have their trains running from the city of Troy may, on equal terms and with equal privileges, use the railroad track or tracks hereby authorized to be constructed, and shall be entitled to at least two direc-tors in said railroad corporation, who shall be residents of the ity of Troy.

Sec. 4. Jonas C. Heartt, Elias Plum, Joseph M. Warren, Hiram locum, Le Grand B. Cannon, Isaac McConnihe, Russell Sage, David uel, Junior, and Thomas Symonds, shall be commissioners to ob-ain subscriptions to the capital stock in the railroad corporation hereby authorized, and shall, by a majority of their number, be em-powered to locate such railroad, subject to the approval of a majority of all the members elected to the common council of the city of Troy; and, in case of the death or refusal to act of any of said commis-sioners, the common council of said city shall fill such vacancy."

Mr. Carr: I offer in evidence the Articles of Association of the Troy Union Railroad Company, filed July 21, 1851.

Same received in evidence, and the following is a copy:

"*Articles of Association of the Troy Union Railroad Company. Filed July* 21, 1851.

We who have hereto subscribed our names do hereby agree to form and organize a company for the purpose of constructing, main-taining, and operating a Railroad for public use in the conveyance of Persons and Property, pursuant to the act entitled 'An Act to authorize the formation of Railroad Corporations and to regulate the same,' passed April 2d, 1850.

Said Company also to be subject to the provisions of the Act en-titled 'An Act to authorize the city of Troy and certain Railroad

Corporations to subscribe for and become the owners of stock f
the construction of a Railroad through the whole or some portion
the city of Troy' passed June 20, 1851.

41 And for that purpose we hereby make and sign the fo
lowing Articles of Association.

Article 1st. The name of the Company shall be 'The Troy Unio
Railroad Company.'

Article 2d. The Corporation shall continue for the term of on
hundred years.

Article 3rd. The proposed Railroad shall be constructed withi
the city of Troy through the whole or some portion thereof with on
or more tracks and to be located pursuant to the provisions of th
said Act entitled 'An Act to authorize the city of Troy and certai
Railroad Corporations to subscribe for and become the owners
stock for the construction of a Railroad through the whole or som
portion of the city of Troy.

Article 4th. The length of said Road as near as can now be est
mated will not exceed three miles and will be wholly within th
County of Rensselaer.

Article 5th. The Amount of the Capital Stock of said Compan
shall be thirty thousand Dollars to consist of Three Hundred share
of One Hundred Dollars each.

Article 6th. The Directors of said Company shall be residents
the city of Troy. The names of the Directors who shall manage th
affairs of the Company for the first year and until others are chose
in their plases are as follows: Jonas C. Heartt, John C. Thompson
Edward Schryver, Leonard R. Sargent, Jared S. Weed, Russell Sage
Le Grand B. Cannon, James Forsyth, Elias Plum, Martin I. Town
send, Uri Gilbert, D. Thomas Vail, Alexander G. Halstead.

We severally subscribe our names and place- of residence to th
foregoing Article- of Association and hereby agree to take the num
ber of shares of the Capital Stock in said Company mentioned
42 after our respective names and pay the amount thereof t
the Directors of said Company in such manner and in such
instalments as they shall require.

Dated, Troy, July 21, 1851.

Subscribers' names.	Residence.	No. of shares.	Amount.

(Here follow the names of David Buel, Jr., and 26 other indi
viduals each subscribing for one share of stock; and of the city o
Troy subscribing for six shares of stock.)

STATE OF NEW YORK,
Rensselaer County, ss:

Jared S. Weed, Russell Sage, and James Forsyth of the city of
Troy in said County, being duly sworn says and each for himself
says that he is a director in the Troy Union Railroad Company men
tioned in the annexed Articles of Association; that stock to the
amount of one thousand dollars for every mile of said railroad in

tended to be built, has been in good faith subscribed, and ten per cent. on an amount of Stock equal to one thousand dollars for every mile of said road, has been actually, and in good faith paid in to the Directors named in said articles, to wit, the sum of $330, has been so paid in, and further these deponents say that it is intended in good faith to construct, maintain and operate the road mentioned in the annexed Articles of Association.

JARED S. WEED.
RUSSELL SAGE.
JAMES FORSYTH.

43 Evidence.

Sworn to before me this 21st day of July, A. D. 1851.
JOHN T. LAMPORT,
Commr. of Deeds, etc., Troy.

(Endorsed:) Filed July 21, 1851. A. G. Johnson, Dep. Sec. of State. Recorded in Book of Railroad Corporations No. 1, page 65.

STATE OF NEW YORK,
Office of the Secretary of State, ss:

I have compared the preceding with the original Articles of Association of the Troy Union Railroad Company with affidavit thereto annexed, filed and recorded in this office on the twenty-first day of July, 1851, and do hereby certify the same to be a correct transcript therefrom and of the whole of said original.

Witness my hand and the seal of office, of the Secretary of State, at the City of Albany, this 27th day of March one thousand eight hundred and eighty-eight.

[SEAL.] FREDERICK COOK,
Secretary of State."

Mr. Carr: I offer in evidence Chapter 462 of the Laws of 1853, an act providing for the taxation of the property of the Union Railroad Company in Troy, passed June 24, 1853.

Same received in evidence, and the following is a copy:

An Act Providing for the Taxation of the Property of the Union Railroad Company in Troy, Passed June 24, 1853, Three-fifths Being Present.

44 The people of the State of New York, represented in Senate and Assembly, do enact as follows:

Sec. 1. For the purposes of taxation in the city of Troy, and in the county of Rensselaer, the property of the Troy Union Railroad Company shall be estimated and assessed (as the common council of said city of Troy, by its contract with said company, dated Decem-

ber third, eighteen hundred and fifty-two, agreed that the same should be) at the amount of the capital stock of said company, and no more; and (as agreed in the said contract) the bridge of the Rensselaer and Saratoga Railroad Company over the Hudson river at Troy shall, for the purpose of taxation, not be estimated or assessed at any increased valuation by reason of the addition thereto, agreed for in said contract.

Sec. 2. This act shall take effect immediately."

Mr. Carr: I offer in evidence an agreement dated December 3, 1852, between the city of Troy, of the first part, Troy Union Railroad Company, of the second part, and the Rensselaer and Saratoga Railroad Company, of the third part, the Schenectady and Troy Railroad Company, of the fourth part, the Hudson River Railroad Company, of the fifth part, and the Troy and Boston Railroad Company, of the sixth part.

(A copy appears in full in the record of the People ex rel. Troy Union Railroad Company against Carter and others, hereafter introduced in evidence.)

Same received in evidence.

Mr. Carr: I offer in evidence the record of a mortgage from the Troy Union Railroad Company, mortgagor, to the Mayor, Recorder, Aldermen, etc., of the city of Troy, N. Y., dated December 1, 1852, which was recorded December 31, 1852, in Book 66 of Mort-
45 gages, at page 79, and was also recorded in Book 85 of Deeds, at page 218.

(A copy of that appears in the Summons and Complaint in an action in the Supreme Court in which the Mayor, etc., of the city of Troy were plaintiffs, and the Troy Union Railroad Company and others were defendants, which was filed in the Rensselaer County Clerk's office March 4, 1857, and was an action to foreclose a mortgage, hereafter introduced in evidence.)

Same received in evidence.

Mr. Carr: In connection with that mortgage I offer in evidence the record of an agreement between the Troy Union Railroad Company and the Mayor, etc., of the city of Troy, acknowledged November 11, 1854, recorded December 13, 1856, in Book 79 of Mortgages, page 431, which was an agreement by the Troy Union Railroad Company for the faithful performance by the constituent companies of the conditions contained in an agreement dated December 3rd, 1852, the one I have just offered in evidence.

Same received in evidence.

Mr. Carr: I also offer in evidence a similar agreement made by the Troy Union Railroad Company, dated December 12, 1853, and acknowledged December 21, 1853. Now both of these agreements offered in evidence appear in the complaint in the action to foreclose a mortgage hereafter referred to and offered in evidence.

I offer in evidence in this connection the Summons and Complaint in an action brought in the Supreme Court of Rensselaer county entitled The Mayor, Recorder, Aldermen and Commonalty of the City of Troy against The Troy Union Railroad Company and Others, which was a complaint to foreclose the mortgage
46 given to the city of Troy that has already been offered in evidence.

Same received, and the following is a copy:

"Supreme Court.

THE MAYOR, RECORDER, ALDERMEN, AND COMMONALTY OF THE CITY OF TROY

against

THE TROY UNION RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY, The Troy & Boston Railroad Company, Hudson River Railroad Company, and The Rensselaer & Saratoga Railroad Company.

Summons for Relief.

To the above-named defendants:

You are hereby summoned and required to answer the complaint of the above-named plaintiffs in this action, of which a copy is hereto annexed and to serve a copy of your answer on us at the city of Troy, within twenty days after the service of this summons, exclusive of the day of such service; and if you fail to answer such complaint as aforesaid, the plaintiffs will apply to the court for the relief demanded in said complaint.

Dated, February 23d, 1857.

G. VAN SANTVOORD AND
CLARENCE BUEL,
Plaintiffs' Attorneys.

47 Supreme Sourt, Rensselaer County.

THE MAYOR, RECORDER, ALDERMEN, and COMMONALTY OF THE CITY OF TROY

against

THE TROY UNION RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY, The Troy & Boston Railroad Company, The Hudson River Railroad Company, and The Rensselaer & Saratoga Railroad Company.

The complaint of the above-named plaintiffs respectfully shows unto this court, that the defendant, The Troy Union Railroad Company is a railroad corporation duly organized under an act of the legislature entitled "An act to authorize the city of Troy and certain

railroad corporations to subscribe for and become the owners of stock for the construction of a railroad through the whole or some portion of the city of Troy," passed June 20, 1851.

And under an act entitled "An act to authorize the formation of railroad corporations and to regulate the same," passed "April 2, 1850, under the corporate name of The Troy Union Railroad Company."

And the plaintiffs further show, that after said "The Troy Union Railroad Company was organized, and some time in the
48 month of December, 1852, an agreement in writing under the seals of the respective corporations, parties thereto bearing date the 3d day of December, 1852, was duly made and executed by and between said plaintiffs of the first part, said The Troy Union Railroad Company of the second part; The Rensselaer and Saratoga Railroad Company [illegible] the third part; The Schenectady and Troy Railroad Company of the fourth part; The Hudson River Railroad Company of the fifth part, and the Troy and Boston Railroad Company of the sixth part, which said instrument is still in full force and is in the words and figures following, to wit:

(This agreement is included in the record in the Carter case previously mentioned and is not included here.)

And the plaintiffs further show, that under and by virtue of said agreement, and of said act of the legislature passed June 20, 1851, the said The Rensselaer and Saratoga Railroad Company, The Schenectady and Troy Railroad Company, The Hudson River Railroad Company, and The Troy and Boston Railroad Company (each then having the business terminus of its respective railroad in the city of Troy, and running its trains to and from said city), subscribed for and became the owner each of an equal amount of the capital stock of The Troy Union Railroad Company, amounting in all to the sum of $30,000. And that by virtue of said agreement, and of said act of the legislature, and of the respective charters of said four defendants, to wit, The New York Central Railroad Company, The Troy and Boston Railroad Company, The Hudson River Railroad Company, and The Rensselaer and Saratoga Railroad Company, said four defendants are now the owners of the whole of the capital stock
49 and property of said The Troy Union Railroad Company; and that each of said four defendants has an interest in the mortgaged premises hereinafter described, under and in pursuance of the provisions of the said agreement, and the other agreements hereinafter mentioned.

And that in further pursuance of said agreement the said The Troy Union Railroad Company with the knowledge and approbation of all the railroad companies, parties to the said agreement and under its corporate seal, executed, duly acknowledged and delivered to the plaintiffs a mortgage bearing date the 1st day of December, 1852, and recorded Dec. 31, 1852, in Rensselaer County Clerk's office in book of mortgages No. 66, pages 79, 80 and 81, which said mortgage was executed, duly acknowledged and delivered on or about the 16th day of December, 1852; and is in the words and figures following, to wit:

This indenture, made this first day of December in the year of our

Lord one thousand eight hundred and fifty-two, between The Troy Union Railroad Company, party of the first part, and the Mayor, Recorder, Aldermen and Commonalty of the City of Troy, as and for the corporation of the city of Troy of the second part, witnesseth.

That, whereas, under and in pursuance of an act of the legislature of the State of New York, passed June 20th, one thousand eight hundred and fifty-one (entitled "An act to authorize the city of Troy and certain railroad corporations to subscribe for and become the owners of stock for the construction of a railroad through the whole or some portion of the city of Troy") the party of the first part has been duly organized as a corporation for the building of the road designated in said act.

50 And, whereas, at a meeting of the board of directors of said railroad company regularly convened on the fifteenth day of December in the year eighteen hundred and fifty-two, it was resolved that for the purpose of indemnifying and saving harmless the corporation of the city of Troy against the payment of any bonds (and the interest thereon) which said city of Troy or its corporation may issue under the authority of the act of the legislature of the State of New York, passed June twentieth, one thousand eight hundred and fifty-one, authorizing the formation of this railroad corporation which is styled The Troy Union Railroad Company; this company will at once execute and deliver to the mayor, recorder, aldermen and commonalty of the city of Troy, as and for the corporation of said city a mortgage of the railroad to be constructed by this company, its capital stock, franchises, buildings, rights and appurtenances and property of every description; conditioned and covenanting for the indemnifying and saving harmless of said corporation of said city against the payment of any and all such bonds and the interest thereon as it shall fall due half yearly, and also conditioned for the payment as often as once in six months, to said corporation of said city, of the entire net income of this railroad corporation, to be applied to and for the payment and satisfaction of the interest of such bonds, and the principal thereof as fast as may be and conditioned further for the faithful performance (by the several railroad corporations which under said act of June twentieth, one thousand eight hundred and fifty-one are or may become subscribers to the stock of the Troy Union Railroad Company) of the several contracts and agreements of such

51 railroad companies to and with the said party of the second part hereto, to pay to said corporation of said city half yearly such sum and sums as shall (in the aggregate payments by all such railroad companies) amount for the first five years to six per cent and thereafter to ten per cent per annum, on the whole amount of bonds to be issued by the corporation of said city for the purposes named in said act of June twentieth, one thousand eight hundred and fifty-one, until the entire amount of both principal and interest of said bonds be fully paid, and that said mortgage be signed by the president of said Troy Union Railroad Company, and that the corporate seal of said Troy Union Railroad Company be duly affixed thereto.

Now, therefore, in pursuance of such resolution and according to the provisions of said act of June twentieth, one thousand eight

hundred and fifty-one, the said party of the first part in consideration of the premises and of one dollar to them paid by the party of the second part (the receipt whereof is hereby acknowledged) do hereby grant, bargain, sell, release and confirm unto the said party of the second part their successors in office and assigns forever, the railroad of said party of the first part in said city of Troy with its capital stock, franchises, buildings, rights, property and appurtenances and all the estate, right, title and interest of the said party of the first part of in and to the same, and every part and parcel thereof; to have and to hold the said railroad and its capital stock, franchises, buildings, rights property and appurtenances unto the said party of the second part, their successors and assigns forever; provided always and these presents are on the express condition that if the said party of the first part shall and do well and truly pay to said
party of the second part, the entire net income of said party
52 of the first part for the purposes in said resolution mentioned (until the whole amount of said bonds, principal and interest shall be paid to said party of the second part, or their payment provided for) and that if the several railroad companies referred to in said resolution shall and do on their parts severally and respectively fulfill all the covenants, agreements and conditions on their part to be done and performed in and by their several contracts to and with said party of the second part of even date herewith; and by said Troy Union Railroad Company, and the said other railroad corporations or any of them, said bonds of said party of the second part shall be and become fully paid and satisfied, cancelled and surrendered or their payment so fully provided for, that said party of the second part shall then be fully indemnified and protected from any loss or payment (out of its own funds or means) of any part thereof; then these presents, and everything herein contained shall cease, determine and be void. But in case default shall be made in the performance of all or either of the conditions herein above set forth, so that there shall be any failure or delay in the full payment to said party of the second part at any time provided for the payment of the semi-annual interest of the said bonds of at least three per cent for the first five years and thereafter of at least five per cent on the whole amount of said bonds (until the whole principal and interest of said bonds shall have been fully paid, and provided for as aforesaid), then and in such case, the said party of the first part covenant and agree to and with the said party of the second part, and their successors in office and assigns, that it shall and may be
lawful for said party of the second part, their successors in
53 office and assigns, and they are hereby authorized and empowered at any time after any such failure or delay, to sell and dispose of the said railroad of said party of the first part, its capital stock, franchises, buildings, rights, property and appurtenances, to any person or persons and on such sale to make, execute and deliver to the purchaser or purchasers thereof his, her or their heirs and assigns, such deed, deeds and instruments as are or may be necessary and sufficient in the law for the full and perfect conveyance forever of the rights, property, premises and franchises hereby

granted and mortgaged; and out of the purchase money arising from such sale or sales, to keep and retain in the hands of said party of the second part, their successors in office and assigns, such sum and sums as shall be sufficient to fully pay or provide for the payment of the principal and interest of all such bonds of said party of the second part, and fully to indemnify them against any and all loss or damage by reason or on account of such bond or bonds, and to pay any and all costs, charges and expenses on such sale or sales, rendering the surplus, if any there be, to said party of the first part or their assigns.

In witness whereof, the said party of the first part, under and in pursuance of the resolution aforesaid, have caused their president to affix hereto the corporate seal of said The Troy Union Railroad Company, and to sign the same officially, this sixteenth day of December, one thousand eight hundred and fifty-two.

[L. S.]

D. T. VAIL,
Prest. Troy Union R. R. Co.

54 STATE OF NEW YORK,
County of Rensselaer, ss.

On this seventeenth day of December, A. D. 1852, personally appeared before me D. Thomas Vail, to me known, who being by me duly sworn, testified that he resided in the city of Troy in the county aforesaid, that he is the president of The Troy Union Railroad Company, that he is acquainted with the corporate seal of said company, and that the seal affixed to the preceding indenture is such corporate seal, and was so affixed by authority of the board of directors of said company and that he subscribed his name to said instrument as such president by the like authority—all which is satisfactory evidence to me of said facts, and of the due execution of said indenture.

JOHN T. LAMPORT,
Comr. of Deeds, etc., Troy.

And the plaintiffs further show, that in further pursuance of said agreement, the said The Schenectady and Troy Railroad Company, did, on or about the sixteenth day of December, 1852, and simultaneously with the execution and delivery of the mortgage above set forth, execute and deliver to the plaintiffs, a certain instrument in writing bearing date the first day of December, 1852, and which said instrument is in the words and figures following, to wit:

Whereas, the legislature of the State of New York, by an act passed June 20th, 1851, provided "for the construction of a railroad through the whole or some portion of the city of Troy" and under said act there has been duly organized for the purpose aforesaid a corporation having the name and style of "The Troy Union
55 Railroad Company," and whereas, by the provisions of said act the corporation of said city of Troy (styled the Mayor, Recorder, Aldermen and Commonalty of the city of Troy), are

authorized to issue the bonds of said city (redeemable in not more than twenty years, and bearing an annual interest of six per cent) to raise a sum not exceeding the cost of the construction of such railroad; and whereas, under the authority given by said act, The Schenectady and Troy Railroad Company has agreed to become and is to be, subscriber for and owner of part of the capital stock of said Troy Union Railroad Company.

Now, Therefore, this instrument made this first day of December in the year of our Lord one thousand eight hundred and fifty-two between the said Schenectady and Troy Railroad Company of the first part, and the said Corporation of the city of Troy (The Mayor, Recorder, Aldermen and Commonalty of the city of Troy), of the second part, Witnesses,

That in consideration of the premises, and in further consideration that said party of the second part shall and do issue the city bonds as aforesaid (from time to time as required), to raise such amount of money as shall pay the cost of the construction of such Railroad of The Troy Union Railroad Company—the said party of the first part for themselves, their successors and assigns, hereby covenant and agree to and with the said party of the second part and their successors in office, that as to the amount of one quarter of the principal of all such bonds, and the semi annual interest thereon (at the rate of six per cent. per annum), they will indemnify and forever save harmless said party of the second part and their successors in
56 office; and said city of Troy of and from any and all expense cost and charges for, towards, or on account of the payment of such amount or part of said bonds, principal and interest, as the same shall respectively fall due—the amount of such part hereby covenanted for not to exceed one hundred and twenty-five thousand dollars; and the said The Troy Union Railroad Company having by indenture of even date herewith mortgaged their said Railroad, Capital Stock, franchises, buildings, rights, property and appurtenances to said party of the second part, hereto with a condition (among others to pay to said party of the second part the entire net income of said The Troy Union Railroad Company), until the whole principal and interest of all of the Bonds of said city of Troy (issued to pay for the construction of said Railroad), shall be fully paid. Now, the further to make sure this agreement to indemnify and save harmless as aforesaid, the said party of the first part hereto also covenant and agree to and with the said party of the second part, and their successors in office, that if in any one of the successive periods of six months (commencing with the first day of January next), such entire net income of said The Troy Union Railroad Company shall not be sufficient to pay to said party of the second part the full amount of three per cent. for the first five years, and thereafter the full amount of five per cent. of and upon the whole amount of such Bonds so issued as aforesaid by said party of the second part—then and in such case the said party of the first part hereto shall and will forthwith pay to said party of the second part, and their successors in office such a sum of money as (with the payment of such net income for such period of six months, appor-

tioned ratably among the whole amount of such bonds so
57 issued), will make up on the principal of such one fourth part of such bonds (hereby guarantied to be provided for, etc.), the amount of three per cent. for such period of six months during the first five years, and thereafter of five per cent for each period of six months, and so and at such rate for each and every like period of six months, until the full payment and discharge of such one quarter of said bonds. The said excess over the semi-annual interest being paid for the purpose of creating a sinking fund to redeem the principal of said Bonds at maturity, and said party of the second part hereby covenanting to appropriate and devote such excess to such purpose, and to be accountable for such appropriation as a part of this contract, and it being understood that in case of any default on the part of said Troy Union Railroad Company to pay such principal and interest as they shall respectively fall due, that said Corporation of said city of Troy is first to resort to its remedy on and under the mortgage hereinbefore mentioned.

In Witness Whereof, The said Schenectady and Troy Railroad Company, by a resolution of its Board of Directors duly passed at a meeting of such board, have caused their President to execute this instrument with and by his official signature and the Corporate Seal of said Company hereto affixed.

RUSSELL SAGE, [L. S.]
President Schenectady & Troy Railroad Company.

And the Plaintiffs Further Show, That on or about said 16th day of December, 1852, and simultaneously with the execution and delivery of the mortgage above set forth, The Troy and Boston Railroad Company, The Hudson River Railroad Company, and
58 The Rensselaer and Saratoga Railroad Company (three of the defendants above named), each for itself, executed and delivered to the plaintiffs, an instrument in writing, under its respective corporate seal, bearing even date with the instrument last above recited, and of similar tenor, therewith, in and by which each of said defendants respectively assumed and took upon itself like covenants, conditions and obligations to those which by the said instrument last recited, were assumed and incurred by said The Schenectady and Troy Railroad Company, and in and by which each of said defendants became liable to the plaintiffs to an equal extent therewith.

And the plaintiffs further show, that in further pursuance of said first mentioned agreement, and of said act of the Legislature, passed June 20, 1851, the said plaintiffs on receiving from The Troy Union Railroad Company the mortgage above referred to, and from each of said four Railroad Companies, to wit: The Schenectady and Troy Railroad Company, the Troy and Boston Railroad Company, The Hudson River Railroad Company, and The Rensselaer and Saratoga Railroad Company, an instrument in writing, of like tenor and date to the one last above referred to, and in consideration thereof issued their Bonds, duly executed under their corporate seal, all bearing

date the first day of January, 1853, to the amount in all, of $500,0
payable as follows: $300,000 in twenty years from date, $100,000
fifteen years from date, and $100,000 in ten years from date, bearin
six per cent. interest thereon, payable semi annually, on the first d
of January, and on the first day of July in each year (said sum
$500,000 being the amount of the estimated cost of the Railroad
be constructed by said The Troy Union Railroad Compan
59 including the Passenger House), and that said Bonds we
negotiated by and under the plaintiff's direction, and with t
knowledge and approbation of all the said Railroad Companies, a
the net proceeds thereof paid over to said The Troy Union Railro
Company, as the same were required by said Company for the co
struction of their said Railroad and Passenger House. And that t
same were applied towards such construction as the plaintiffs are i
formed and believe, and that all said bonds are now held and own
by bona fide holders and owners thereof; who paid for the same
purchasers thereof.

And the plaintiffs further show, that some time prior to the fi
day of December, 1853, under and by virtue of an act of the Leg
lature, entitled 'An Act to authorize the consolidation of certa
Railroad Companies,' passed April 2, 1853, the said The Schenectad
and Troy Railroad Co. became with certain other Railroad Co
panies, consolidated into a single corporation, known as The Ne
York Central Railroad Company, being one of the defendants in th
action, and that by virtue of said act and of such consolidation, sa
The New York Central Railroad Company assumed all the proper
franchise, rights and liabilities of said The Schenectady and Tr
Railroad Company, as well under said act, as under the said agre
ments, mortgage and otherwise.

And the said plaintiffs further show that said defendant, The Tr
Union Railroad Company, with the knowledge and approbation
all the said railroad companies, afterwards represented to the plai
tiffs that the amount of $500,000, raised by said plaintiffs as afo
said, and paid over to said The Troy Union Railroad Co
60 pany, would be insufficient to pay for the cost of said railro
and passenger house, to be constructed by said The Tr
Union Railroad Company, as aforesaid and that the further sum
$180,000 would be required to complete the construction of the sa
and requested the plaintiffs to issue other bonds to raise the said a
ditional amount so deemed necessary for such purposes.

And that thereupon, on or about the 12th day of December, 18
the said defendant, The Troy Union Railroad Company, by a
with the consent and pursuant to an agreement with each of sa
four other defendants, executed and delivered to the plaintiffs
certain contract or instrument in writing under the seal of the sa
company, in and by which, among other things, it was covenante
and agreed that the mortgage above recited should be held and co
ditioned for the just and full performance by said four last mentione
defendants, of all and singular the agreements and covenants co
tained in four separate instruments executed by them respective
to the plaintiffs, and hereinafter more particularly described whi

contract, so executed and delivered by said The Troy Union Railroad Company to the plaintiffs, is recorded in the office of the clerk of Rensselaer county, in Book of Mortgages 79, at page 438, and is in the words and figures following, to wit:

Whereas, The Troy Union Railroad Company, by Indenture of Mortgage, bearing date the first day of December, in the year of our Lord, one thousand eight hundred and fifty-two (recorded in the office of the clerk of the county of Rensselaer, December 31st, 1852, in Book of Mortgages No. 66, pages 79, 80 and 81), mortgaged its railroad, capital stock, franchises, buildings, rights, property
61 and appurtenances, to the Mayor, Recorder, Aldermen and Commonalty of the city of Troy (as and for the corporation of the city of Troy), for the purpose of indemnifying and saving harmless the said corporation of the city of Troy, against the payment of any bonds (and the interest thereon), which said city of Troy or its corporation might thereafter issue under the authority of the Act of the Legislature of the State of New York, passed June 20th, 1851, in reference to the construction of a railroad through the whole or some part of the city of Troy; according to the provisions of which Act, The Troy Union Railroad Company had been organized; which mortgage provided and was conditioned for as well the indemnifying, as aforesaid, of said corporation of said city of Troy against the payment of principal or interest of any and all bonds to be at any time issued as aforesaid, as the performance by The Hudson River Railroad Company, The Rensselaer and Saratoga Railroad Company, The Schenectady and Troy Railroad Company, and the Troy and Boston Railroad Company respectively, of all and singular the conditions and covenants contained in certain instruments, of even date with said mortgage executed to said party of the second part, to said mortgage, by the said railroad company respectively. And whereas, the said Hudson River Railroad Company, the said Rensselaer and Saratoga Railroad Company, The New York Central Railroad Company (which by virtue of the Act of said Legislature, known as the Consolidation Act, passed April 2d, 1853, has assumed the property, franchises, rights and liabilities of said Schenectady and Troy Railroad Company), and the said Troy and Boston Railroad Com-
62 pany have respectively executed certain other instruments (bearing date the twelfth day of December, 1853), to said party of the second part to said mortgage; now therefore, under and in pursuance of a resolution of the board of directors of the said The Troy Union Railroad Company, duly passed at a meeting of said board of directors, held the twelfth day of December, 1853, the said The Troy Union Railroad Company hereby covenants and agrees, to and with the party of the second part to said mortgage, that said mortgage, is and shall be held and conditioned for the just and full performance by said Hudson River Railroad Company, said Rensselaer and Saratoga Railroad Company, said New York Central Railroad Company, and said Troy and Boston Railroad Company respectively of all and singular the agreements and covenants contained in their respective instruments hereinbefore referred to.

In witness whereof, the said The Troy Union Railroad Compa
by a resolution of its board of directors, duly passed at a meeting
such board, have caused their president to execute this instrume
with and by his official signature, and the corporate seal of s
company, hereto affixed.

JONAS C. HEARTT, *President.* [L. S.]

STATE OF NEW YORK,
County of Rensselaer, ss:

On this 21st day of December, A. D., 1853, before me personall
appeared Jonas C. Heartt, to me known who being by me duly swor
testified that he resided in the city of Troy in said county, and is
quainted with the corporate seal of said company, that the seal affix
to the preceding instrument is such corporate seal, and was
63 affixed by authority of the board of directors of said compan
and that he subscribed his name to such instrument as su
president by the like authority—all of which is to me satisfacto
evidence of said facts, and of the due execution of said instrument.

JAMES FORSYTH,
Comr. of Deeds, Troy.

And the plaintiffs further show, that simultaneously with the e
cution and delivery of the contract last set forth, and pursuant to t
agreement between all, of said defendants in relation to the executi
of said contract last set forth, and as a part thereof, each of the s
four other defendants, to wit: The New York Central Railroad Co
pany, The Troy and Boston Railroad Company, The Hudson Riv
Railroad Company, and the Rensselaer and Saratoga Railroad Co
pany did, under their respective corporate seals, execute and deliv
to the plaintiffs, as of that date, the instrument referred to in t
aforesaid contract. That the instrument so executed by the Tr
and Boston Railroad Company was in the words and figures follo
ing, to wit:

Whereas, The Legislature of the State of New York, by an a
passed June 20th, 1851, provided, "for the construction of a railro
through the whole or some portion of the city of Troy," and und
said act there has been duly organized for the purpose aforesaid
corporation bearing the name and style of "The Troy Union Ra
road Company," and whereas, by the provisions of said act the co
poration of said city of Troy (styled the Mayor, Recorde
64 Aldermen, and Commonalty of the City of Troy), are autho
ized to issue the bonds of said city (redeemable in not mo
than twenty years, and bearing an annual interest of six per cent.
to raise a sum not exceeding the cost of the construction of such rai
road; and whereas, under the authority given by said act, The Tro
and Boston Railroad Company agreed to become and did become an
is a subscriber for and owner of part of the capital stock of said Tro
Union Railroad Company.

Now, therefore, this instrument made the 12th day of Decembe

n the year of our Lord one thousand eight hundred and fifty-three, tween the said The Troy and Boston Railroad Company of the rst part, and the said corporation of the city of Troy ("The Mayor, ecorder, Aldermen and Commonalty of the City of Troy,") of the cond part, witnesses, that in consideration of the premises, and in rther consideration that said party of the second part shall and do sue the city bonds as aforesaid (from time to time as required), to ise such amount of money as shall be required to pay the cost of mpleting the construction of such railroad of The Troy Union Rail-ad Company,—the said party of the first part, for themselves, their ccessors and assigns, hereby covenant and agree to and with the id party of the second part and their successors in office, that as to e amount of one quarter of the principal of all such bonds, and the mi-annual interest thereon (at the rate of six per cent. per annum), ey will indemnify and forever save harmless said party of the cond part and their successors in office: and said city of Troy of nd from any and all expense, cost and charges, for, towards or on account of the payment of such amount or part of said bonds, principal and interest, as the same shall respectively fall due—the amount of such part hereby covenanted for not to xceed forty-five thousand dollars (of principal). And the said The roy Union Railroad Company having by indenture bearing date e first day of December, in the year eighteen hundred and fifty-wo, mortgaged their said railroad, capital stock, franchises, build-ngs, rights, property and appurtenances to the said party of the cond part, hereto with a condition (among others) to pay to said arty of the second part, the entire net income of the said The Troy nion Railroad Company, until the whole principal and interest of ll bonds of said city of Troy (issued to pay for the construction of aid railroad), shall be fully paid. Now, the further to make sure uch this agreement to indemnify and save harmless (as herein afore-aid), the said party of the first part hereto also covenant and agree, o and with the party of the second part, and their successors in ffice, that the said mortgage, is and shall be, a security for the bonds f the further issue, as hereinabove provided for, and also for the ust and full performance by the party of the first part hereto of all nd singular the covenants, conditions and agreements of this in-trument; and also that if in any one of the successive periods of six onths (commencing with the first day of January next), such en-ire net income of the said The Troy Union Railroad Company shall ot be sufficient to pay to said party of the second part the full mount of the three per cent, for the first five years, and thereafter he full amount of five per cent. of and upon the whole amount of uch bonds, so issued as aforesaid by said party of the second part, then and in such case the said party of the first part hereto shall and will forthwith pay to said party of the second part, and their successors in office, such a sum of money as (with he payment of such net income for such period of six months, ap-portioned ratably among the whole amount of such bonds so issued) will make up on the principal of such one-fourth part of such bonds, nd the amount of three per cent, for each such period of six months

during the first five years, and thereafter of five per cent. for e
such period of six months and so and at such rate, for each and ev
like period of six months until the full payment and discharge
such one-quarter of said bonds. The said excess over the semi-
nual interest being paid for the purpose of creating a sinking fu
to redeem the principal of said bonds at maturity, and said party
the second part, by receiving this instrument, covenanting to app
priate and devote such excess to such purpose, and to be account
for such appropriation as a part of this contract and it being und
stood that in case of any default on the part of the said The Tr
Union Railroad Company to pay such principal and interest as th
shall respectively fall due, that said corporation of said city of Tr
is first to resort to its remedy on and under the mortgage here
before mentioned.

In witness whereof, the said The Troy and Boston Railroad Co
pany, by a resolution of its board of directors duly passed at a me
ing of such board, have caused their president to execute this inst
ment with and by his official signature and the corporate seal of s
company hereto affixed.

D. T. VAIL, [L. S.]
Prest. Troy & Boston R. R. Co.

67 STATE OF NEW YORK,
County of Rensselaer, ss:

On the twenty-first day of December, A. D., 1853, before me p
sonally appeared D. Thomas Vail, to me known, who being by
duly sworn, testified that he resides in the city of Troy in the cou
aforesaid, that he is the president of the Troy and Boston Railr
Company, and is acquainted with the corporate seal of said compa
that the seal affixed to the preceding instrument is such corpo
seal, and was so affixed by authority of the board of directors of s
company, and that he subscribed his name to such instrument
such president by the like authority—all which is to me satisfact
evidence of said facts, and of the due execution of said instrum

JAMES FORSYTH.
Commr. of Deeds, Troy

That a similar instrument in all respects containing like covena
and conditions and undertakings, and assuming similar and eq
obligations, was executed and delivered to the plaintiffs by each
the three other defendants, to wit, The New York Central Railr
Company, The Hudson River Railroad Company, and The Re
selaer and Saratoga Railroad Company.

And the plaintiffs further show, that in further pursuance of
act of the Legislature first above referred to, and of said first m
tioned agreement, the said plaintiffs on receiving from each of s
four defendants, to wit, The New York Central Railroad Compa
The Troy and Boston Railroad Company, The Hudson River R
road Company, and The Rensselaer and Saratoga Railr

Company, a contract or instrument in writing of similar tenor and date with that hereinbefore recited, from The Troy and oston Railroad Company to said plaintiffs, and on receiving from id defendant, The Troy Union Railroad Company, the contract or strument in writing above set forth, and in pursuance of the re- uest aforesaid, issued their Bonds bearing date January 1st, 1854, ly executed under their Corporate Seal to the amount in all of 80,000, all payable in twenty years from date, and each bearing x per cent. interest payable semi-annually on the first day of Jan- ry and on the first day of July in each year, and procured the same be negotiated, and paid the net proceeds thereof to said defendant, he Troy Union Railroad Company, to be applied to the completion f the construction of their said Railroad and Passenger House. And hat such proceeds were so applied, as plaintiffs are informed and be- eve, and that the said bonds so last issued are now held and owned y bona fide holders and owners thereof, who paid for the same as urchasers thereof.

And the plaintiffs further show that said defendant The Troy nion Railroad Company, with the consent and approbation of the id other Railroad Companies, afterwards again represented to the laintiffs that the whole sum so raised by the plaintiffs as aforesaid, nd paid over by them to said The Troy Union Railroad Company, mounting in all to $680,000 and upwards, would not be sufficient o pay for the cost of the Railroad and Passenger House to be con- ructed by said The Troy Union Railroad Company as aforesaid, nd that the further sum of $27,000 would be required to complete he construction of the same, and requested the plaintiffs to issue ad- ditional bonds for raising the said sum.

And that thereupon and on or about the seventh day of November, 1854, the said defendant, The Troy Union Rail- oad Company, by and with the consent and pursuant to an agree- ment with each of said four other defendants, executed and delivered o the plaintiffs a certain contract or instrument in writing, under he seal of the said Company, in and by which among other things, t was covenanted and agreed that the mortgage above recited should e held and conditioned for the just and full performance by said our last mentioned defendants, of all and singular the agreements nd covenants contained in four separate instruments executed by hem respectively to the plaintiffs, and hereinafter more particularly described, which contract so executed and delivered by said The Troy Union Railroad Company, to the plaintiffs, was recorded in Rensselaer County Clerk's office, in Book 79 of Mortgages, at page 31, and is in the words and figures following, to wit:

Whereas, The Troy Union Railroad Company, by Indenture of Mortgage, bearing date the first day of December, in the year of our Lord, one thousand eight hundred and fifty-two (recorded in the office of the Clerk of the County of Rensselaer, December 31, 1852, in Book of Mortgages, No. 66, pages 79, 80 and 81), mortgaged its Railroad, capital stock, franchises, buildings, rights, property and appurtenances, to the Mayor, Recorder, Aldermen, and Commonalty of the city of Troy (as and for the corporation of the city of Troy),

for the purpose of indemnifying and saving harmless the said corporation of the city of Troy against the payment of any bonds (and the interest thereon), which said city of Troy or its corporation might thereafter issue under the authority of the act of the Legislature of the State of New York, passed June 20th, 1851, in
70 reference to the construction of a Railroad through the whole or some part of the city of Troy, according to the provisions of which Act, The Troy Union Railroad Company had been organized; which mortgage provided and was conditioned for as well the indemnifying as aforesaid, of said corporation of said city of Troy against the payment of principal or interest of any and all bonds to be at any time issued as aforesaid, as the performance by The Hudson River Railroad Company, The Rensselaer and Saratoga Railroad Company, the Schenectady and Troy Railroad Company and the Troy and Boston Railroad Company, respectively, of all and singular the conditions and covenants contained in certain instruments, of even date with said mortgage, executed to said party of the second part, to said mortgage, by the said Railroad Company respectively. And, Whereas, the said Hudson River Railroad Company, the said Rensselaer and Saratoga Railroad Company, The New York Central Railroad Company (which by virtue of the Act of said Legislature, known as the consolidation act, passed April 2d, 1853, has assumed the property, franchises, rights and liabilities of said Schenectady and Troy Railroad Company), and the said Troy and Boston Railroad Company have respectively executed certain other instruments (bearing date the sixteenth day of October, 1854), to said party of the second part to said mortgage; Now, therefore, under and in pursuance of a resolution of the Board of Directors of the said The Troy Union Railroad Company, duly passed at a meeting of said Board of Directors, held the seventh day of November, 1854, the said The Troy Union Railroad Company hereby covenants and agrees, to and with the party of the
71 second part to said mortgage, that said mortgage is and shall be held and conditioned for the just and full performance by said Hudson River Railroad Company, said Rensselaer and Saratoga Railroad Company, said New York Central Railroad Company and said Troy and Boston Railroad Company, respectively of all and singular the agreements and covenants contained in their respective instruments hereinbefore referred to.

In Witness Whereof, the said The Troy Union Railroad Company, by a resolution of its Board of Directors, duly passed at a meeting of such Board, have caused their President to execute this instrument, with and by his official signature, and the corporate seal of said Company hereto affixed.

GEO. GOULD, [L. S.]
President Troy Union R. R. Co.

STATE OF NEW YORK,
Rensselaer County:

On this 11th day of November, 1854, before me personally appeared George Gould to me known who being by me duly sworn, testified that he resides . . the city of Troy in said County, that he is the President of the Troy Union Railroad Company, and is acquainted with the Corporate seal of said Company, that the seal affixed to the preceding instrument is such Corporate Seal, and was so affixed by authority of the Board of Directors of said Company, and that he subscribed his name to such instrument as such President by the like authority—all of which is to me satisfactory evidence of said facts, and of the due execution of said instrument.

JAMES FORSYTH,
Commr. of Deeds, Troy.

72 And the Plaintiffs further say, That simultaneously with the execution and delivery of the contract last set forth, and pursuant to the agreement between all said defendants, in relation to the execution of said contract last set forth, and as a part thereof, each of said four other defendants, to wit, The New York Central Railroad Company, The Troy and Boston Railroad Company, The Hudson River Railroad Company and The Rensselaer and Saratoga Railroad Company, did execute and deliver to the plaintiffs, as of that date each for itself the instrument referred to in the aforesaid contract; that the instrument so executed by the Hudson River Railroad Company, was in the words and figures following, to wit:

Whereas, the legislature of the State of New York by an act passed June 20th, 1851, provided "for the construction of a railroad through the whole or some portion of the city of Troy," and under said act there has been duly organized for the purpose aforesaid a corporation bearing the name and style of "The Troy Union Railroad Company," and whereas by the provisions of said act the corporation of said city of Troy (styled the Mayor, Recorder, Aldermen and Commonalty of the City of Troy), are authorized to issue the bonds of said city (redeemable in not more than twenty years and bearing an annual interest of six per cent), to raise a sum not exceeding the cost of the construction of such railroad; and whereas, under the authority given by said act, The Hudson River Railroad Company, agreed to become, and did become a subscriber for and owner of part of the capital stock of said Troy Union Railroad Company. And whereas, under an agreement dated the third day of December, 1852, certain bonds of the said city of Troy, have
73 at two different times been issued to aid in constructing the said Union Railroad; but such issues (amounting in all to $680,000), have been found to be insufficient, and an additional amount not exceeding twenty-seven thousand dollars, is estimated to be necessary for that purpose.

Now, therefore, this instrument made this sixteenth day of October, 1854, between the said The Hudson River Railroad Company of

the first part, and the said the Mayor, Recorder, Aldermen and Commonalty of the City of Troy of the second part, witnesseth, that in consideration of the premises, and in further consideration that said party of the second part shall and do issue the city bonds as aforesaid, from time to time as required, to raise such amount of money as shall be required to pay the cost of completing the construction of such railroad of The Troy Union Railroad Company (not exceeding the sum of twenty-seven thousand dollars), the said party of the first part for themselves, their successors and assigns, hereby covenant and agree to and with the said party of the second part and their successors in office, that as to the amount of one-quarter of the principal of all such last named bonds (not exceeding for such quarter the sum of $6,750), and the semi-annual interest thereon, at the rate of six per cent. per annum, the payment of the other three-fourth parts of the said bonds being guaranteed simultaneously herewith to the satisfaction of the said parties of the second part by the three other railroad corporations, to wit: The New York Central, The Rensselaer and Saratoga and The Troy and Boston Railroad Companies, parties to the said agreement, dated the 3d day of December, 1852, each guaranteeing one-fourth part of
74 said bonds they will indemnify and forever save harmless the said party of the second part and their successors in office; and the said city of Troy of and from any and all expenses, cost and charges, for, towards, or on account of the payment of such amount or one-fourth part of said last named bonds, principal and interest, as the same shall respectively fall due; the amount of such part hereby covenanted for not to exceed six thousand seven hundred and fifty dollars, of principal. And the said The Troy Union Railroad Company having by indenture bearing date the first day of December, 1852, mortgaged their said railroad, capital, stock, franchise, buildings, rights, property and appurtenances to the said party of the second part hereto, with a condition (among others), to pay to the said party of the second part, the entire net income of the said The Troy Union Railroad Company, until the whole principal and interest of all the bonds of said city of Troy issued to pay for the construction of said railroad, shall be fully paid.

Now, therefore, to secure the payment of the said bonds hereby guaranteed, and the interest thereon as aforesaid, the said party of the first part also covenants and agrees to and with the said party of the second part, and their successors in office, that the said mortgage, is and shall be, a security for the further issue of bonds as hereinabove provided for, and also for the just and full performance by the party of the first part hereto, of all and singular the covenants, conditions and agreements of this instrument; and also that if in any one of the successive periods of six months (commencing with the first day of October, 1854), such entire net income of the said The Troy Union Railroad Company shall not be sufficient to pay to said party of the second part the full amount of three per
75 cent. of and upon the whole amount of such bonds, so issued as aforesaid by the said party of the second part, and of the principal thereof payable in equal amounts in one, two, three and

four years, from the first day of October, 1854, then and in such case the said party of the first part hereto shall, and will forthwith pay to the said party of the second part, and their successors in office, such a sum of money as (with the payment of such net income for such period of six months, apportioned rateably among the whole amount of such bonds so issued), will make up on the principal of such one-fourth part of such bonds, the amount of three per cent. for each such period of six months, and the principal thereof in equal amounts, in one, two, three and four years from said the first day of October, 1854, and it being understood that in case of any default on the part of the said The Troy Union Railroad Company to pay such principal and interest as they shall respectively fall due, that said corporation of said city of Troy is first to resort to its remedy on and under the mortgage hereinbefore mentioned.

In witness whereof, the common seal of the said The Hudson Railroad Company, is hereto affixed and their president in pursuance of a resolution of the board of directors of said company has hereunto subscribed his name on the day and year in that behalf above mentioned.

[L. S.] OLIVER H. LEE,
V. Prest.

STATE OF NEW YORK,
City and County of New York, ss:

On the twenty-third day of October, A. D. 1854, before me
76 came Oliver H. Lee, to me personally known, and known to me to be the vice-president of the corporation described in, and who executed the foregoing agreement or instrument in writing, to wit, The Hudson River Railroad Company, who being by me duly sworn, deposes and says that he resides in the city of New York, that he is the vice-president of the said corporation, that the seal affixed to the foregoing agreement or instrument in writing is the corporate seal of the said corporation, and was affixed to said agreement by authority of said corporation, and that he signed his name thereto by like authority—and he acknowledged the same to me to be the act of said corporation.

EDM'D ELMENDORF, JR.,
Commissioner of Deeds.

That a similar instrument in all respects, containing like covenants, conditions and undertakings and assuming similar and equal obligations, was executed and delivered to the plaintiffs by each of the three other defendants under their respective corporate seals, to wit, The New York Central Railroad Company, The Troy and Boston Railroad Company and The Rensselaer and Saratoga Railroad Company.

And the plaintiffs further show, that in further pursuance of the act of the Legislature first above referred to, and of said first mentioned agreement and in accordance with the request aforesaid, the

said plaintiffs on receiving from each of said four defendants, to wit, The New York Central Railroad Company, The Troy and Boston Railroad Company, The Hudson River Railroad Company, and The Rensselaer and Saratoga Railroad Company, said contracts or
77 instruments in writing, and on receiving from said defendant, The Troy Union Railroad Company, the contract or instrument in writing of which a copy is above set forth, issued their bonds,—payable in equal amounts, in one, two, three and four years from the first day of October, 1854, the time at which said bonds bear date, with six per cent. interest thereon payable semi-annually on the first day of April and on the first day of October in each year,—to the amount of $27,000, and procured the same to be negotiated, and paid the net proceeds thereof to said defendant, The Troy Union Railroad Company, to be applied to the completion of the construction of said defendant's railroad and passenger house and that such proceeds were so applied as the plaintiffs are informed and believe, and that the said last-mentioned bonds are now held and owned by bona fide holders and owners of the said bonds who paid for the same as purchasers thereof.

And the said plaintiffs further allege, that under and by virtue of said mortgage, and of the instruments in writing subsequently executed by said defendant, The Troy Union Railroad Company, and also of the several instruments in writing executed by said four other defendants, as heretofore mentioned, said plaintiffs were duly authorized and empowered in case of default in the performance of all or either of the conditions of said mortgage, and of the instruments subsequently executed by said The Troy Union Railroad Company, to sell and dispose of said mortgaged property, and out of the purchase money arising from such sale or sales, to keep and retain such sum or sums as should be sufficient to fully pay or provide for the payment of the principal and interest of the bonds issued by the plaintiffs, and to indemnify them against all
78 loss or damage on account of the same, and to pay all the costs, charges and expenses of such sale or sales, rendering the surplus, if any there should be, to said defendant, The Troy Union Railroad Company, or their assigns.

And the plaintiffs further show, that each of said four defendants, to wit, The New York Central Railroad Company, The Troy and Boston Railroad Company, The Hudson River Railroad Company and The Rensselaer and Saratoga Railroad Company by virtue of the respective instruments in writing, executed and delivered to the plaintiffs by each of said defendants, and by said The Troy and Schenectady Railroad Company as above stated, and by virtue of the obligations assumed and undertaken by each of said defendants, are held and firmly bound unto said plaintiffs, each to the extent of one-quarter, to secure and make good to the plaintiffs, the payment of the principal and interest which said defendants, The Troy Union Railroad Company, covenanted and agreed to pay in and by the said mortgage and instruments subsequently executed by said defendant, and in the manner and at the times therein directed.

And the plaintiffs further show, that the said railroad and pas-

senger house of The Troy Union Railroad Company were completed and in full operation on or about the 22d of February, 1854, and that ever since that time the said four railroad companies have been and now are in the use and occupation thereof as such railroads, by running their cars thereon to and from the said city of Troy, and by using the said passenger house for freight and passengers as fully and absolutely as they were authorized to do
79 under the said agreements, according to the true intent and meaning thereof, by and with the consent of the said The Troy Union Railroad Company; and that in so using the same they and each of them became and were liable to pay the tolls, and to do and perform the other acts and things required of each of them in and by the said agreements, and to contribute to the sinking fund, and to indemnify the plaintiffs as mentioned and provided for in the said agreements; and that the amount of tolls contracted and agreed to be paid under the said agreements is ample and sufficient to pay and discharge the annual interest upon the said bonds so issued by the plaintiffs under the said agreements, and to raise and create the sinking fund mentioned therein.

And the plaintiffs further allege that the said defendant, The Troy Union Railroad Company, has failed to comply with the conditions of said mortgage, and with the conditions, covenants and agreements in its said contracts, subsequently executed and delivered to the plaintiffs as above set forth, in that the said defendant, The Troy Union Railroad Company, has not paid to the plaintiffs the entire net income of said defendant, or any part thereof, from and since the first day of July, 1856; and in that the said four other defendants, to wit, The New York Central Railroad Company, The Troy and Boston Railroad Company, The Hudson River Railroad Company and The Rensselaer and Saratoga Railroad Company, have not, each for itself indemnified the plaintiffs, each as to the amount of one-quarter of that portion of the principal of the bonds issued by the plaintiffs as aforesaid, which has already become due, nor as to the semi-annual interest on such bonds, and all expenses, costs and charges, for and towards the payment of such
80 amount of principal and interest, as the same has fallen due; and that the said four defendants have not, each for itself (in default of payment by said The Troy Union Railroad Company), paid to the plaintiffs such a sum of money as would make up on the principal of such one-fourth part of said bonds, the amount of three per cent. for each period of six months from the time when such bonds bear date and as would make up one-fourth part of the principal of the bonds last issued by the plaintiffs, which became due on the first day of October, 1856, or any part thereof; but have each wholly made default therein, and failed to comply with the conditions, agreements and covenants on their part agreed to be done and performed in and by their several contracts to and with the plaintiffs, hereinbefore set forth.

And the plaintiffs further say, that no action at law, and no proceedings whatever, to enforce any of said conditions, covenants and agreements, or the payment of any part of the mortgaged debt, are

pending or have been taken against the defendants, or either of them.

And the plaintiffs further allege, that the said defendants, The Troy Union Railroad Company, is insolvent and is unable to pay its debts, or meet its obligations; that except the property embraced in and covered by the said mortgage, said defendant, The Troy Union Railroad Company has no property of any considerable value or amount, and that said mortgage premises are wholly insufficient to pay or secure the bonds so issued, as hereinbefore stated by the plaintiffs, and interest thereon; that the entire income and all the available means of said defendant, The Troy Union Railroad
Company, are derived from the tolls agreed to be paid by the
81 said four other defendants, pursuant to the first contract hereinbefore set forth; and that said defendant, The Troy Union Railroad Company, has no other means or resources out of which to pay such bonds and the accruing interest thereon, except such tolls so contracted to be paid by said four other defendants.

That as the plaintiffs are informed and believe, three of said defendants, to wit, The New York Central Railroad Company, The Troy and Boston Railroad Company, and The Hudson River Railroad Company, severally avow their intention not to pay, under said contract first above set forth, any further tolls or monies on account thereof to said The Troy Union Railroad Company.

And the said plaintiffs allege and charge, that said three defendants, to wit, The New York Central Railroad Company, The Troy and Boston Railroad Company, and the Hudson River Railroad Company, by confederating and conspiring together or otherwise, intend to break and destroy said contract or instrument first above set forth, and to render its provisions nugatory and inoperative, and for that purpose refuse to pay such tolls or any part thereof, and thus deprive said The Troy Union Railroad Company of the means of meeting its obligations and of paying said accruing interest upon said bonds, and of providing for the gradual payment of the principal in order to force the said plaintiffs into a foreclosure of said mortgage and a sale of the mortgaged property by means of which they hope that said instrument herein first above recited may become null and void, and they and each of them be released from the obligations thereof, and
liable only upon their several separate covenants and agree-
82 ments contained in the instrument executed by them, respectively, hereinbefore set forth.

And the plaintiffs allege, that such covenants and agreements of one at least of said defendants, to wit, The Troy and Boston Railroad Company, and as the plaintiffs believe also, those of the Hudson River Railroad Company, are utterly insufficient as an indemnity to the plaintiffs and to the city of Troy against the ultimate payment of that portion of said bonds and interest, which after deducting what may be realized from a sale of the mortgaged premises, will remain secured only by the guaranties of said two defendants, respectively, by reason of the embarrassment of the said Companies, if not their actual insolvency.

And the plaintiffs allege, that by means of the premises aforesaid

and the attempts of the said three Railroad Companies to annul said first mentioned contract, and by the failure and default of all of said defendants to comply with the conditions, covenants and obligations entered into by said several defendants as hereinbefore stated, the said plaintiffs have already sustained serious loss and injury by being compelled to provide for the payment of the sums which have already become due for principal and interest on their said bonds; and that they have thereby been compelled to pay the sum of $6,327.50, which became due on the first day of October, 1856, for principal and interest on the bonds last issued by the plaintiffs as before stated, and the further sum of $20,400, which became due on the first day of January, 1857, for interest on the first and second issues of bonds (amounting together to $680,000), issued by the plaintiffs as before stated. And

83 that they are threatened with still more serious damage in the ultimate payment of the principal and interest of said bonds without any adequate indemnity for a large portion thereof, by reason of the pecuniary inability of one or both of said defendants, The Troy and Boston Railroad Company and The Hudson Railroad Company, to respond in damages in so large an amount upon their respective covenants of indemnity.

And the plaintiffs further allege, that by the means aforesaid, the value of the securities to said plaintiffs for the ultimate payment of said bonds and interest is greatly impaired, and said plaintiffs are in danger of being deprived of one of their most efficient remedies for enforcing their legal and equitable rights against said defendants, and protecting themselves against ultimate loss, arising from a failure of said defendants to provide for the payment of said bonds and interest, and for the raising and creating of the said sinking fund.

And the said plaintiffs further allege, that the said defendant, The Troy Union Railroad Company, through the said action of a considerable majority of its directors, who are also directors of or designated by said three companies, pursuant to the 27th clause of section of said first mentioned contract or agreement is a party to the said acts, neglects, omissions and wrongs of said three companies; and that with the concurrence of its said directors it neglects and has failed to collect or receive any of said monthly tolls which have become due from said railroad companies as follows, to wit, from The New York Central Railroad Company since the 19th day of September, 1856, from the Troy and Boston Railroad Company since the 30th day of June, 1856, from the Hudson River Railroad Company since the

84 26th day of September, 1856, and from the Rensselaer and Saratoga Railroad Company since the 16th day of March, 1856. And that there is now due and owing from each of said four railroad companies to said The Troy Union Railroad Company, a large sum of money for said monthly tolls, subject to such just offsets as said railroad companies or either of them may be able to establish; and that the whole amount of such indebtedness after deducting all such offsets of every description and all the expenses necessary to the proper management and maintenance of the railroad and passenger house of said The Troy Union Railroad Company, is more than sufficient to pay all the principal and interest which said plain-

tiffs were compelled to and did pay on the 1st day of October, 185[illegible] and on the 1st day of January, 1857, as hereinbefore stated.

And that said The Troy Union Railroad Company, designedly and wilfully neglects and refuses to take any step whatever to enforce the payment or collection of said tolls or any part thereof, in order to injure the plaintiffs and break up the said agreements, thus voluntarily putting it out of its power to comply with the provisions of said contract by applying said tolls to the payment of the accruing interest on said bonds and making provisions for the gradual payment and extinguishment of the principal thereof, pursuant to the seventh clause or section of the contract or instrument first above set forth, and that the refusal of said seventh clause or section of the contract or instrument in writing first above set forth; and that the refusal of said The Troy Union Railroad Company to proceed to collect or enforce the payment of said tolls, or any part thereof, thus voluntarily depriving itself of the means of meeting its obligations to said
85 plaintiffs under said contract, is done with the full knowledge, consent and concurrence of the said three other defendants, to wit, The New York Central Railroad Company, The Troy and Boston Railroad Company, and the Hudson River Railroad Company, and by their procurement, privity and connivance, through the action of the majority of the directors of The Troy Union Railroad Company so designated and appointed by said three companies and acting for them and to promote their interests, and all for the purpose and with the intent and design of breaking up the said contract and evading and escaping from the obligations and duties it imposes upon them without regard to the rights of the plaintiffs, or to the loss and damage occasoned thereby.

And the said plaintiffs further state that the said plaintiffs and the city of Troy, and the municipal authorities thereof, and committees appointed by the Common Council thereof, to negotiate said bonds, have fully and duly executed, carried out and performed, all and singular the conditions, provisions, covenants and agreements in said first mentioned contract, as well as in the other contracts entered into by them, as above set forth, provided to be done and performed on their part, so far as the same up to the present time were required to be or could be executed, and are ready and willing and offer to perform and carry out all such conditions, provisions, covenants and agreements therein mentioned as yet remain to be executed on their part.

And they further state that said defendants have not performed the conditions, covenants and agreements in said first contract, as well as in the other contracts herein set forth, mentioned to be done and performed on their part respectively, but have made de-
86 fault therein, and refuse to carry out and execute them in the several respects hereinbefore set forth, and particularly in that the said The Troy Union Railroad Company neglects and refuses to raise by the tolls payable by the said four other defendants, a sum equal to six per cent. upon the cost of its said railroad and passenger house, or any sum whatsoever to be applied in payment of the interest on said bonds, as the same became due, as provided

in the seventh clause or section of said first mentioned contract and has so refused since the times hereinbefore particularly mentioned and set forth.

And in that the other defendants, have as aforesaid each for itself neglected and refused and still neglect and refuse to pay the tolls so payable by them and agreed to be paid by each of them respectively, under the provisions of the ninth and tenth clauses or sections of said first mentioned contract or instrument in writing.

And the plaintiffs further state, that under and by virtue of the said first mentioned agreement, and of the said mortgage and other instruments executed and delivered to them by said defendants as hereinbefore stated, the said plaintiffs acquired a lien by way of mortgage on the railroad, capital stock, franchise, buildings, rights, property and appurtenances of said defendant, The Troy Union Railroad Company, and also on the entire net income of the same, and the tolls payable to the said company, under the said agreement, and that the same is now a valid and subsisting lien thereon, and on each of them.

Wherefore, the plaintiffs demanded the judgment of this court, in the premises that the said defendants, and each of them, may be adjudged specifically, to perform the said contracts and agree-
87 ments so made and executed between them and the plaintiffs and every part and parcel thereof, by and under the direction of this court and with such sufficient guarantees and securities as the court shall think proper to appoint and require. And especially that said defendant, The Troy Union Railroad Company, shall be adjudged forthwith to proceed to receive and collect from said four other defendants; and that said four other defendants shall be adjudged to pay over to the said The Troy Union Railroad Company, the amount of tolls, specified and called for by the seventh and eighth clauses or sections of the said contract, for and during the whole of the period, and in the proportions therein specified, as the same are and shall become due and payable. And that the said defendant, The Troy Union Railroad Company, be adjudged to apply the same when so collected from time to time, as specified in said contract, to wit, a sum equal to six per cent. upon the cost of The Troy Union Railroad and Passenger House for the first five years after the date of said bonds, to be applied in payment of the interest on the said bonds as the same shall become due, and thereafter a sum equal to ten per cent. upon such cost, six per cent, or so much thereof as may be necessary to be applied in payment of the interest on the said bonds, as the same shall become due, and the residue to be applied in payment of the principal of such bonds.

And that it be further adjudged, that in case the defendant, The Troy Union Railroad Company, should fail or refuse to comply with such final judgment, and specifically perform said contract, then that the said plaintiffs or some proper disinterested person, to be appointed by the court for that purpose, be put in possession
88 of the railroad and appurtenances, franchises, buildings and other property of The Troy Union Railroad Company, and

hold the same with all its rights and franchises and be author and empowered under the direction of the court to operate and m age said road and to receive the income and rents thereof, and collect the tolls of said four other defendants due and to bec due under the provisions of said contract, and to apply the s pursuant to the terms thereof in the same manner as the said Troy Union Railroad Company, might or could do, and with sim rights, powers and privileges, and subject to the same liabili duties and obligations.

Or if it shall appear to the court that the plaintiffs are not enti to such relief, then that the said mortgaged pr ises and all property, income, rights and franchises, of said The Troy U Railroad Company, mentioned in or intended to be conveyed by mortgage, be sold according to law; and that the defendants, all persons claiming under them subsequent to the commence of this action, be forever barred and foreclosed of all right, claim, and equity of redemption in the said mortgaged premises; that moneys arising from the sale be brought into court; that the pla iffs may be paid the amount of said bonds and the interest ther and the cost and expenses of this action so far as the amount of s moneys properly applicable thereto will pay the same. And t the defendants, The New York Central Railroad Company, T Troy and Boston Railroad Company, The Hudson River Railr Company, and The Rensselaer and Saratoga Railroad Company, m be adjudged to pay each one-quarter of any deficiency which m remain in the full amount of said bonds so secured
89 said mortgage, and the separate guaranties of said roads, the interest after applying all the moneys arising from s sale so applicable thereto.

And the said plaintiffs pray that for and during the pende of this action, a receiver may be appointed according to the prac of this court, of all and singular the railroad, capital stock, fr chises, buildings, rights, property and appurtenances of said defe ant, The Troy Union Railroad Company, and of all property m gaged to said plaintiffs, including the entire net income of said fendants, and the amount payable to them for tolls, and all t equitable interests, things in action and effects, and vested with the rights and powers of said defendant as to the management of s railroad, collection and application of its income, and in every ot respect, and with full power to prosecute and enforce all the clai rights and equities of said defendant against said four other fendants, to wit, The New York Central Railroad Company, T Troy and Boston Railroad Company, The Hudson River Railr Company, and The Rensselaer and Saratoga Railroad Company, all tolls, debts and demands which have already accrued and wh may hereafter accrue and become due from said four defendants either of them, under and by virtue of the several agreements, c tracts, and instruments, hereinbefore specifically set forth. A also to demand, collect, receive and prosecute all claims whatsoe already accrued, or hereafter to become due and owing to said T Troy Union Railroad Company from any source or party whatsoe

d to do and perform such other acts and duties not inconsistent th the provisions of said several contracts and instruments above set forth as this court may direct.

Or for such other or further judgment or relief in the premises as to the court it shall seem meet and proper to nt with the costs of this action.

G. VAN SANTVOORD AND
CLARENCE BUEL,
Attorneys for the Plaintiffs.

WM. CURTIS NOYES,
Of Counsel.

TATE OF NEW YORK,
Rensselaer County, ss:

Hiram Slocum, of the city of Troy, in said county, being duly orn, says that he is the mayor of the city of Troy, and that the oregoing complaint in this action is true of his own knowledge, cept as to the matters which are therein stated on information and lief, and as to those matters he believes it to be true.

HIRAM SLOCUM.

Subscribed and sworn to before me this 2nd day of March, 1857.
S. SERGEANT,
Comr. of Deeds, Troy, N. Y.

STATE OF NEW YORK,
City of Troy, County of Rensselaer:

Clerk's Office.

I hereby certify that I have compared the an-exed copy of Sum-mons and complaint with the original thereof filed in this office on the 4th day of March, 1857, and that the same is a correct transcript therefrom and of the whole of said original.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 11th day of November, 1907.
[L. S.] J. V. JACOBS, *Clerk.*

Mr. Carr: Now, I offer in evidence what is known as the reformed gre-ment, dated July 1st, 1858, between the city of Troy, of the first art, The Troy Union Railroad Company, of the second part, The ensselaer & Saratoga Railroad Company, of the third part, The New ork Central Railroad Company, of the fourth part, The Hudson iver Railroad Company, of the fifth part, the Troy & Boston Rail-oad Company, of the sixth part. (The Troy and Schenectady road entioned in the agreement of December, 1852, had been taken over by the New York Central between 1852 and 1858.) This agreement st offered appears in full in the record of the case of the People

ex rel. Troy Union Railroad Company against Carter and Oth hereinafter introduced in evidence. This reformed contract is r corded December 2, 1858, in Book of Deeds 108, page 279, in Re selaer County Clerk's office.

Mr. Carr: I offer in evidence the remittitur from the Court of A peals, in the case of the People ex rel. The Troy Union Railroad Co pany, respondent, against Edward Carter and Others, Assessors the City of Troy, and John D. Spicer, Comptroller of the City Troy, which was filed in the Rensselaer County Clerk's office N vember 21, 1899.

92 Same received and the following is a copy:

In the Court of Appeals of the State of New York.

THE PEOPLE ex Rel. THE TROY UNION RAILROAD COMPANY, Respondent,

against

EDWARD CARTER, JAMES MALONEY, CHRISTIAN W. RAPP, an Michael T. Tierney, Assessors of the City of Troy, and John D Spicer, Comptroller of the City of Troy, Appellants.

Case.

This is an appeal brought by the assessors and the comptroller o the city of Troy, from the order of the Supreme Court, at Gener Term sitting in the Third Judicial Department, which affirmed wi $50 costs of appeal the judgment, order or determination of the Tri Court reducing the valuation of the relator's property, known as th Troy Union Railroad and including the Troy Union depot and oth station houses and parts of lots not used as railroad propert

93 which was listed by the assessors for the purposes of taxatio for the year 1886, at $783,984, to a sum not exceeding $3 000. The Troy Union Railroad Company was organized as a ra road corporation in 1851, with a capital stock of nominally $30,0 It has always maintained a board of directors, takes care of the roa bed, and keeps an expense account, but it does not own any rollin stock, and the entire capital stock is held and owned by the trun line railroad companies which use in common the Troy Union ra road and the Troy Union depot, each paying its proportion of th expense of maintaining the city railroad, but they pay no rent fo the use of such road and, of course, there are no earnings of said Tro Union railroad, nor are any dividends paid upon its nominal stoc The value of the railroad property as assessed is not contested, but th relator claims, and the Trial Court held that by a special act of th Legislature known as chapter 462, Laws of 1853, this railroad pro erty, for the purposes of taxation, cannot be legally listed at a greate sum than $30,000; that decision was affirmed by the General Ter

nd from its order this appeal is taken, and the following is a copy
f the return made by the county clerk.
Dated, July 31, 1889.

R. A. PARMENTER,
Attorney for the Appellant, Troy, N. Y.

Supreme Court.

THE PEOPLE ex Rel. THE TROY UNION R. R. Co.

against

EDWARD CARTER, JAMES MALONEY, CHRISTIAN W. RAPP, and Michael A. Tierney, General Assessors of the City of Troy, and John D. Spicer, Comptroller of the City of Troy.

Supreme Court.

THE PEOPLE ex Rel. THE TROY UNION R. R. Co.

against

EDWARD CARTER, JAMES MALONEY, CHRISTIAN W. RAPP, and Michael A. Tierney, General Assessors of the City of Troy, and William J. Roche, Comptroller of the City of Troy.

Hearing had Wednesday, April 4, 1888, 10 A. M., before
5 John E. Kelly, referee, appointed by the court to take the testimony and report same to the court for trial.

Appearances: For relator, Hon. Esek Cowen and Hon. John H. Peck; for defendants, Hon. R. A. Parmenter, Corporation Counsel.

Mr. Cowen: Relator offers in evidence an act of Legislature of the State of New York, chapter 255 of the Laws of 1851, passed June 20th, 1851, entitled "An Act to authorize the city of Troy and certain railroad corporations to subscribe for and become the owners of stock, for the construction of a railroad through the whole, or some portion of the city of Troy."

Mr. Parmenter: I will take the General objection to that as incompetent and immaterial in these proceedings and in violation of section 16, art. 3 of Constitution.

Overruled. Exception.

Mr. Cowen: We next offer in evidence a contract dated the third day of December, 1852, between the Mayor, Recorder, Aldermen and Commonalty of the City of Troy, party of the first part, the Troy Union Railroad Company, party of the second part, the Rensselaer and Saratoga Railroad Company, party of the third part, the Schenectady and Troy Railroad Company, party of the fourth part, the Hudson River Railroad Company, party of the fifth part, and the Troy and Boston Railroad Company, party of the sixth part.

Mr. Parmenter: I object to it as incompetent, irrelevant and immaterial in these proceedings. And also on the ground that it has been annulled and cancelled.

Overruled. Exception.

Under exception of defendants same is received and marked "R
lators' Exhibits Contract of 1852."

96 Relator also offers in evidence an act of the Legislatu
chapter 462 of the Laws of 1853, entitled:

"An Act Providing for the Taxation of the Property of the Tr
Union Railroad Company in Troy," Passed June 24, 1853, Thr
fifths Being Present.

The People of the State of New York, represented in Senate an
Assembly, do enact as follows:

Section 1. For the purpose of taxation, in the city of Troy and
the county of Rensselaer, the property of the Troy Union Railro
Company shall be estimated and assessed (as the Common Council
said city of Troy, by its contract with said company, dated Decemb
3, 1852, agreed that the same should be) at the amount of the capit
stock of said company, and no more, and as agreed in said contra
the bridge of the Rensselaer and Saratoga Railroad Company, ov
the Hudson river at Troy, shall, for the purposes of taxation, not
estimated or assessed, at any increased valuation by reason of th
addition thereto, agreed for in said contract.

Section 2. This act shall take effect immediately.

Mr. Parmenter: I object to that on the ground that the act ha
become inoperative, because the contract referred to in it has bee
superseded and cancelled and that it has been also superseded by the ge
eral law in 1885, requiring the assessors to make their assessment ro
and to verify the same as prescribed in that act. And as immateri
and not conclusive upon the assessors in the valuation of propert
for the purpose of taxation, also as in violation of section 16, article
of Constitution.

97 Overruled. Exception.

Mr. Cowen: Relator also offers in evidence a contract made th
first day of July, in the year one thousand eight hundred and fifty
eight, between the Mayor, Recorder, Aldermen and Commonalty o
the City of Troy, party of the first part, Troy Union Railroad Com
pany, party of the second part, the Rensselaer and Saratoga Rail
road Company, party of the third part, the New York Central Rail
road Company, party of the fourth part, the Hudson River Railroa
Company, party of the fifth part, and the Troy and Boston Railroa
Company, party of the sixth part.

Mr. Parmenter: I object to it as incompetent, irrelevant and im
material in these proceedings, and that the provisions of said agree
ment are not conclusive on the assessors of the city of Troy, in lis
ing real or personal property in said city, for the purposes of taxatio
during the years 1886 and 1887, also as ultra vires as against asse
sors.

Overruled. Exceptions.

Received and marked "Relators' Exhibit Contract of 1858."

DANIEL ROBINSON, called as a witness on behalf of the relator, sworn and examined, testified as follows:

Examined by Mr. Cowen:

Q. You reside in the city of Troy, Mr. Robinson?
A. Yes, sir.
Q. And have for how many years?
A. Since '36. Fifty-two years it will be the 1st of May.
Q. At what time did you become connected with The Troy & Boston Railroad Company?
A. In its organization.
Q. And at what time did you become connected with The Troy Union Railroad Company?
A. At its organization.
Q. You have been fami-iar with the business of both roads since their organization?
A. I have.
Q. When was the Union Depot of The Troy Union Railroad Company first put in operation?
A. I think it was '53 or '54.
Q. In either '53 or '54?
A. Yes, sir.
Q. How many rai-roads in 1852 had their termini in the city of Troy,
A. Greenbush——
Q. (Int'g.) That was the New York Central—practically?
A. No, sir; The Hudson River.
Witness, continuing: Troy & Schenectady, Troy & Boston and Rensselaer and Saratoga.
Q. Prior to the building of The Union Railroad and its depot, where were the termini of those roads—in what parts of the city?

Mr. Parmenter: I object to it as immaterial and incompetent.

Objection overruled. Exception.

A. The termini of The Hudson River was at Adams street.
Q. On River?
A. Yes, sir.
Q. Its principal terminus was on Adams street, at the junction of River?
A. Yes, sir.
Q. Where did the steam cars of the Rensselaer & Saratoga stop?
A. They stopped at the opposite side of the river at the bridge.
Q. Green Island?
A. Yes, sir.
Q. And where did the passenger coaches stop to unload passengers?
A. They were brought in it by horses, on the street over the bridge, and these passengers cars came down River street, and stopped at the Troy house.

Mr. Parmenter: I want to be regarded as objecting to this line of testimony. I object to it as incompetent and immaterial in either of these proceedings.

Overruled. Exception.

Mr. Cowen:

Q. And if passengers were going to New York they would go down to The Hudson River terminus?
A. Yes, sir.
Q. Where was the terminus of The Troy & Schenectady?
A. At the other side of the bridge.
Q. That is on Green Island?
A. Yes, sir.
Q. And they drew their cars, too?
A. Yes, sir, the same way—by horses.
Q. And passenger cars brought down River street?
A. Came down as far as the steamboat landing—right in front of our store.
Q. At the foot of State street, then?
A. Back of the Alhambra.
Q. What was the terminus of The Troy & Boston?
A. In River street. The same way. They came down on the track—in front of the Mansion house.
Q. Not with a locomotive?
A. No, sir. Horse track from Hoosick down to River.
Q. And the locomotive stopped at Hoosick street?
A. Yes, sir.
100 Q. Passenger cars were drawn by horses down River street to where?
A. In front of the Mansion house.
Q. Where were The Hudson River passengers discharged?
A. Right at the foot of this street, my impression is.
Q. You think that the passengers of The Hudson River road were discharged somewhere between State street and the Troy house?
A. Yes, sir.
Q. That is your recollection?
A. Yes, sir.
Q. In those days passenger cars weren't sent over one road to another?
A. No interchanging between the connecting roads.
Q. All passengers had to change?
A. Yes, sir.
Q. What was the principal business street of the city in those days?
A. River street.
Q. And all these passenger cars were drawn on to River street?
A. Yes, sir.
Q. And some distance along?
A. Yes, sir.

Q. Do you know whether there were negotiations between the city authorities and the officials of those different railroads, with regard to taking the termini out of River street, and putting it some more convenient place?

Mr. Parmenter: I object to it as incompetent, immaterial and irrelevant in these proceedings, and as not the best evidence of it, and also as merged in the agreement.

Overruled. Exception.

Mr. Cowen to witness:

Q. What was the fact in regard to that?

A. The facts were that the officials of the city of Troy and
101 the officials of the railroads were in consultation for near six months to devise some practical way of getting through the city of Troy, by steam. The city of Troy had its railroad to Schenectady, which was being run at a loss.

Overruled. Exception.

Mr. Parmenter: I object to this mode of proving it.

Witness continuing: And our community was taxed every year for the support of that road. Our leading citizens, as well as members of the common council, and members of the railroad.

Mr. Parmenter: I object to what leading citizens said and desired, and object to the manner of proving it.

What citizens said and desired is excluded.

Witness continuing: Had frequent meetings (and it was finally referred to parties and those parties conceived a plan of this Union Railroad. It was reported to The Union Railroad and carried to each of the separate railroads—the plan was—and it was accepted and the contract emanated—it was made by that process.)

The portion within brackets excluded. Relator excepts.

Q. By series of negotiations between the city authorities and between the officers of the different railroad companies?

A. Yes, sir.

Last question and answer excluded. Relator excepts.

Q. You remember when the contract that was put in evidence—the contract of '52—was made—you recollect the occasion when it was made?

A. Yes, sir. And I received it and kept it in custody.

Q. You received the contract and had the custody of it?

A. Yes, sir.

102 Mr. Parmenter:

Q. You mean there was only one original contract and you had it?

A. You know there were six signed if I recollect right, one
the city of Troy and the others by the railroads.
Q. Each had the same contract you had?
A. Yes, sir.
Q. Duplicate?
A. Yes, sir.

Mr. Cowen:

Q. The third subdivision of this contract declares that the Re
selaer & Saratoga Railroad Company, the Schenectady & Troy Ra
road Company, The Hudson River Railroad Company and The Tr
& Boston Railroad Company shall each subscribe for an equ
amount of the capital stock of The Troy Union Railroad Compan
so as to fill up the present capital of thirty thousand dollars—do y
know whether that was actually done or not?
A. It was done.
Q. And that was the capital?
A. Yes, sir.

Mr. Parmenter: I want to object to this oral proof. I object
proving by him the capital stock was thirty thousand dollars.

Sustained.

Mr. Cowen: We offer the articles of association of The Tr
Union Railroad Company, the original of which is on file at th
office of the secretary of state of Albany, in evidence.
Mr. Parmenter: I object to that as incompetent and immaterial
those proceedings.

Overruled. Exception.

103 Mr. Cowen:

Q. The fourth subdivision of said contract of '52 provides that th
said party of the first part (which is the City of Troy) agree to iss
their bonds at six per cent. interest, payable in not less than ten, n
more than twenty years from the date thereof, to an amount sufficie
to raise the money to pay the whole amount of the cost of the ra
road, which shall be constructed by The Troy Union Railroad Com
pany, including the passenger house—do you know whether the
bonds were issued or not?
A. They were, sir.
Q. To what amount?
A. Six hundred and eighty thousand dollars, if I recollect righ

Mr. Peck: To the amount of $707,000.

Witness: Seven hundred and seven thousand dollars.

Mr. Cowen:

Q. It was also provided that The Troy Union Railroad Compan
should execute to the city of Troy a mortgage upon their road, et

conditioned for the payment of the whole amount of said bonds, with interest as they should become due. Do you know whether that mortgage was executed?

A. It was executed, sir.

Q. The sixth subdivision provides that the Rensselaer & Saratoga Railroad Company, The Schenectady & Troy Railroad Company, The Hudson River Railroad Company and The Troy and Boston Railroad Company, each covenants to execute to said party of the first part a contract to indemnify the said party of the first part against the payment of one-fourth of said bonds, and of the
104 interest thereon, provided that the income of The Troy Union Railroad Company shall be insufficient to pay the same. Was there a contract to that condition executed by the different railroads?

A. It was, sir.

Q. Do you know whether or not the bonds issued by the city of Troy, for this purpose, have been paid by the railroads?

A. They have, sir.

Q. According to your recollection, about what was the entire cost of acquiring property and laying the tracks of The Troy Union Railroad Company and building the passenger station?

A. Something over eight hundred thousand dollars, sir.

Q. Then, a part of it must have been paid aside from the bonds?

A. Yes, sir. Stock, thirty thousand, and then bonds, and I know we were assessed for this purpose in addition.

Q. You have already stated that The Troy & Schenectady road was then practically owned by the city?

A. Yes, sir.

Q. Where is the road-bed of The Union Railroad situated?

A. In the city of Troy, entirely.

Q. Entirely within the city of Troy?

A. Yes, sir.

Q. No part of the road outside of the city?

A. No, none at all.

Mr. Cowen: I think it is proper to state what kind of a corporation it is.

Q. Does The Troy Union Railroad Company carry on the business of transportation?

A. No, sir; not at all. It is simply a track and road that is used and operated by each of the roads that are parties to this contract.

Q. It carries no passengers?

A. No, sir; carries nothing. It has no business on earth.

105 Mr. Parmenter:

Q. No business on earth?

A. It has no business of its own—The Union Railroad. I say has no business of its own.

Mr. Cowen:

Q. Its track and its passenger depot or station are used by the other railroads that are parties to this contract, put in evidence?

A. The four roads—they have the use of the entire track.

Q. And The Union Railroad owns no cars, locomotives or property of any kind?

A. No, sir; except this track and depot that I know of.

Q. The roads that do operate The Union Railroad operate it by steam?

A. They do, sir.

Q. Were steam cars taken into or from the city of Troy, across the Hudson river, prior to the construction of the railroad referred to?

A. What?

Q. Were cars propelled by steam into or from the city of Troy across the Hudson river prior to the construction of this road?

A. None at all.

Mr. Peck:

Q. And nowhere crossed the Hudson river?

A. No, sir; not even at Albany.

Mr. Cowen:

Q. The depot of the Troy Union Railroad Company, Mr. Robinson, was located where, with reference to the streets in the city?

A. Located on Sixth street.

106 Q. It covers a part of what was originally Sixth street?

A. Yes, sir.

Q. And the tracks, where are they laid down?

A. Laid down pretty near where Sixth street was.

Q. Remaining tracks—are they laid down in the streets of the city?

A. Some of them laid in the streets and some of them on land purchased.

Q. Parts of city lots?

A. Yes, sir.

Q. That were purchased by the company at the time?

A. Yes, sir.

Mr. Cowen: I think that is all, Mr. Parmenter.

Cross-examination.

By Mr. Parmenter:

Q. Mr. Robinson, you know the fact, I suppose, that the city leased the Troy and Schenectady Railroad to the Central?

A. Yes, sir.

Q. And it was merged into the Central?

A. Yes, sir.

Q. And subsequently—I don't know precisely what time—the Central and Hudson River merged and became one road?

A. Yes, sir.

Q. Do you remember when that consolidation took place?

A. '54. The consolidation between the Hudson River and Cen-

tral—they were consolidated about 1870. The consolidation of the Troy & Schenectady with the system of railroads making the New York Central took place about in 1854. The consolidation of the New York Central and Hudson River was still later.

Q. When you speak about the "system" of railroads consolidating, it was the roads between Albany and Buffalo?

A. Yes, sir.

107 Q. Since that time what additions have been made to the bridge over the Hudson—the railroad bridge—long bridge as they call it—Rensselaer and Saratoga bridge?

A. Since this contract was made in '52 it has been double tracked.

Q. I want a little more in detail?

A. And an iron bridge instead of the wooden bridge.

Mr. Peck: That is no part of the Union Railroad?

Witness: No, sir.

Mr. Parmenter: This contract says that.

Q. When was the Union depot first built?

A. '53 or '54.

Q. You say that was built on Sixth street?

A. Yes, sir.

Q. Wasn't additional land east of Sixth street taken?

A. I say we took additional lands each side of it. We bought the property of Gilbert, Bush & Company there on Sixth street.

Q. Now, the Troy Union Railroad Company has a board of directors, and always has?

A. Always, sir.

Q. And you are its president now, are you, sir?

A. I am a director in that company.

Q. How long have you been president of it?

A. I am merely director. I never was president.

Q. You have always been a director in it?

A. Yes, sir; always directed the Troy & Boston interest.

Q. A portion of the time treasurer?

A. Yes, sir.

Q. And it has had a president during all that time, also?

A. Yes, sir.

Q. You have no rolling stock, you say, but don't you employ men?

A. We do employ men.

Q. Audit their bills and pay them?

A. Yes, sir.

108 Q. The contracts are made for the Troy Union Railroad Company?

A. Yes, sir.

Q. You employ all the help that is required on the Troy Union Railroad?

A. The Union Railroad employs all their help.

Q. And where did you get your money from which you pay the help?

A. One-quarter from each of the roads.

Q. Those four roads you speak of each own one-quarter of the stock?

A. The four—Hudson River and Central own one-half, Troy & Boston and Rensselaer & Saratoga own each one-quarter.

Q. Can you tell me whether before the second contract was made that has been put in evidence, the twelfth provision of the first contract was ever carried into effect—provides that the Troy Union Railroad Company shall erect swing bars in the streets?

A. That was never carried into effect.

Q. Any swing bars erected before the second contract went into effect?

A. No, sir.

Q. Did you not keep an account with the different roads—these three roads?

A. The principle is this, sir. The Union Railroad appoints what they call a manager. I was the manager of it and the treasurer, both. Every month we call in our bills and they are presented to the board and an order is made upon each company for one-fourth of these bills. They are paid monthly—everything pertaining to the road. No accounts longer than from 10th to 15th of next month.

Q. Do you keep any bank account of Union Railroad?

A. Always. The Troy Union Railroad Company leased the right for all the other roads to pass over. There is a contract made
109 between the Union Railroad and Rensselaer and Saratoga, by which the owners of the Union Railroad can pass the bridge free—have any use of it—as much as they need. Union Railroad pays for it—each railroad pays a quarter.

Mr. Parmenter:

Q. There has been no other fifth road come in, has there?

A. Never.

Q. At the time when this first contract was entered into the railway from Troy to Greenbush was the Troy & Greenbush Railroad, wasn't it, and that was leased by the Hudson River road?

A. It was leased before.

Q. They were operating the road under a lease?

A. The Hudson River road signed as lessees of the Troy & Greenbush Railroad.

Q. And it has been used so ever since?

A. Yes, sir. The contract refers to them as lessees of the Troy & Greenbush Railroad. I don't know whether that has been always the expression they used, though.

Q. There was a law suit, was there not, pending at the time when this last agreement was made between the city of Troy, as plaintiff, and Union Railroad was it?

A. They sued all the roads. I have forgotten the process, but it was a suit.

Q. After this second contract was entered into, did you understand that it revoked the first contract?

Objected to as a question of law.

Witness: It did not, sir. No one understood so. It was a reform ontract.

Q. Now, since the last contract was made, they have built a new epot, haven't they?

A. No, sir.

Mr. Parmenter: Oh, yes, they have; it was burned in '62.

Witness: It burned you know, but there were walls—part f it was left—a little of it was left—we spent about twenty thousand ollars on it, and the original depot cost from seventy to eighty thou- and.

Q. It was burned up?

A. Yes, sir.

Q. And reconstructed?

A. Yes, sir.

Q. That was in '62, wasn't it?

A. Yes, sir.

Q. It was burned by the great fire of the tenth of May, 1862?

A. Yes, sir.

Q. Can you now, or at some other hearing, give me the exact cost of the Troy Union Railroad?

A. I cannot any nearer than I have. The report of the State Engineer, if you open it, will tell you what it actually cost. I have given that book to the assessors and they have it, and you can find it.

Q. Is there anywhere I can find what the receipts of these various railroads at the city of Troy amount to, for passengers and freight?

A. There is no system of accounts that would enable anyone to tell just what it is in Troy.

Q. These bonds that were issued by the city of Troy, are they paid?

A. They are all paid now.

Q. When were the last paid?

A. I think about three years ago, sir.

Redirect examination.

By Mr. Cowen:

Q. For what purposes are the Troy Union Railroad Company employing men?

A. Taking care of the track. It is a system adopted, because you couldn't put each road upon a track. There is no quarter—they all use the whole.

Q. You employ trackmen to take charge of the track?

A. Yes, sir.

Q. And men to watch the crossing?

A. Yes, sir, flagmen.

Q. That is the principal kind of men employed?

A. Yes, sir.

Q. And those are the ones paid in the manner you speak of?

A. Yes, sir.

Mr. Cowen to Mr. Parmenter: Mr. Parmenter will you admit that the Union Railroad Company from its organization up to 1886, was assessed for thirty thousand dollars and no more?

Mr. Parmenter: I suppose that is so, and yet I don't want, as I am situated, to admit that. I will refer to the books and find out and if it is so I will admit it, but I will object to the evidence.

Mr. Cowen: But as to the fact you will admit it?

Mr. Parmenter: I will admit the fact, if I find it so, but object to the evidence.

Mr. Cowen to witness: It is so, isn't it?

Witness: Yes, sir.

Q. Never until the assessment of 1886 was the assessment over thirty thousand?

A. That is so.

Recross-examination.

By Mr. Parmenter:

Q. You speak about the help that you employ—you employ all help around the depot, don't you—I don't know about your ticket agents?

112 A. No, sir; the four roads up to the present time have been at the expense of each company. Each company expended what it saw fit, but I understand now, since they have made one common passenger room, one common baggage room, that they are treated as rest of the charge. It comes into this account as expense of the Union Railroad and pay one-fourth each.

Q. Last year the Troy & Boston and Fitchburg Railroad consolidated?

A. Yes, sir.

Q. And it is now running under the new company known as the Fitchburg Railroad Company?

A. Yes, sir.

JOHN H. PECK, called as a witness on behalf of the relator, sworn and examined, testified as follows:

Examined by Mr. Cowen:

Q. You are an attorney and counsellor-at-law?

A. I am.

Q. And counsel for the Troy Union Railroad Company?

A. I was in this proceeding, and am now at the time.

Q. Were you employed by the Troy Union Railroad Company in the year 1886, to go before the General Assessors and object to the assessment mentioned in the petition in this case?

A. I was and I went before them at the time that they had for the hearing of persons aggrieved, or who considered themselves aggrieved.

Q. You went before them in 1886 while they were hearing persons aggrieved?

A. Yes, sir.

113 Q. State what you did before them in 1886?

A. I appeared before them and I announced that I appeared on behalf of the Troy Union Railroad Company to object to the

assessment then on the books of the proposed assessment, and I read to them my objections, which I had before me, printed on typewriter and after I concluded the reading of it, I left it with them for reference, and told them if there were any facts stated in the written objections that I left with them, as to which they wanted further proof, that I should furnish it.

Q. Did they retain it?

A. They did for some time, and it was finally returned to me. The paper I hold in my hand is that paper, as it is here, without the pencil marks. Those pencil marks indicate the revised assessment as they made it. They made a reduction in the assessment.

The relator offers the printed objections in evidence.

Received and marked "Relators' Exhibit Objections in 1886." Which may be read on the argument of appeal without being printed.

Q. Were you also employed by Troy Union Railroad Company to object to the assessment in 1887?

A. I was.

Q. State what you did?

A. I went before the assessors and told them that I appeared for the Troy Union Railroad Company to object to the assessment as it was on the books and asked them to change it, and read to them the objections which I had before me at the time and now have in my hand, and I read pretty nearly the whole of it, but I think there were some parts, which I stated to them, and at the conclusion of reading I told them that I would leave these objections
114 with them, and that if there were any points as to which they wished further proof, those being sworn objections, that I would furnish them on being notified. I left the paper with them and they retained it some time.

Mr. Cowen: We offer those objections in evidence.

Received and marked "Relators' Exhibit Objection, 1887," which may be read on the argument of appeal without being printed.

Cross-examination.

By Mr. Parmenter:

Q. Do you remember when it was you went before them in 1886?

A. I cannot give you the date; sir. It was while they were hearing persons who felt aggrieved.

Q. Latter part of August?

A. Yes, sir; my impression is from something I have seen, it was the 25th of August. I wouldn't be sure, though.

Q. It was one of those five days they met to hear grievances?

A. Yes, sir.

Q. That is the same thing in 1887?

A. Yes, sir.

Q. And about the same time of year, I suppose?
A. Yes, sir.

Mr. Cowen: I think that is our case.

Adjourned until Monday, April 9th, 1888, 10 o'clock A. M.

115 Monday, April 9th, 1888—10 A. M.

Parties met pursuant to adjournment.
Same appearances as before.

E. Ogden Ross, called on behalf of the defendants, sworn a examined, testified as follows:

Examined by Mr. Parmenter:

Q. Mr. Ross, are you engaged in the comptroller's office in t city?
A. I am, sir.
Q. And have been since when?
A. 1875.
Q. Can you state the aggregate amount of the assessed valuat of taxable property in the city of Troy, for the year 1858?
A. I can. Twelve million.

Mr. Peck: Hold on—you haven't been asked.
Mr. Parmenter: What was it?
Mr. Cowen: I object to that question as immaterial and incom tent.

Witness: Twelve million eight hundred and nineteen thous one hundred and ninety-five dollars.
Q. What was the amount of the tax levied in 1858?

Same objection.

Q. I can't give you that from this book. I have got to go a get another book.

116 Witness does so, and answers: One hundred fifty- thousand no hundred and twenty-eight dollars and eigh cents.

Q. Now, what was the tax of the Troy Union Railroad that yea the assesment was $30,000 was it?
A. Yes, sir.
Q. What was the tax?
A. I haven't looked on the book for that. That is in the sea I referred to when talking to you. I can give you the rate. you wait until to-morrow I can give you that. The rate is 1 city taxes on one hundred dollars valuation.

(The amount to be left blank and to be inserted in by steno rapher.) $384.

Q. Now, what was the assessment against the Troy Union Ra

Coal Company from that time down to and including 1884—it was $30,000, I understand?

A. It was.

Q. Give me the tax levy after 1858 down to and including 1884, and the rate—I want the total valuation of the tax levy and the tax and the rate?

A. '59—total valuation, twelve million eight hundred fifty-three thousand two hundred ninety dollars. Tax levy, one hundred forty-seven thousand six hundred forty-eight dollars. Rate 1.20.

Q. Now, 1860?

A. Valuation thirteen million one thousand six hundred fifteen dollars.

Mr. Peck: This, of course, is all subject to our objection.

A. Tax levy, one hundred forty-two thousand five hundred seven dollars and twenty cents. Rate 1.14, '61 valuation, thirteen million no hundred seventy-nine thousand six hundred eighty dol-
117 lars. City tax levy, one hundred forty-three thousand eight hundred fifty-six dollars and sixty-five cents. Rate 1.15.

Q. When does the tax levy and valuation rise up a good deal above that?

A. It ran right straight, along at the rate until 1885, when property was placed at what was considered its full value. From 1858 the highest valuation was sixteen million one hundred eighty-four thousand one hundred and seventy-six dollars, in 1860; 1884, fifteen million five hundred eleven thousand six hundred eighty-three dollars.

Q. Now, in 1884 what was the rate of tax?

A. For city purposes—3.08 on city valuation.

Q. Then, they changed the mode?

A. Yes, sir.

Q. And undertook to assess property at its full value—its actual value?

A. Yes, sir.

Q. That was completed in 1886—in the spring—the rolls were completed and turned over in the spring of 1886?

A. Yes, sir.

Mr. Peck:

Q. That was the first one of these.

Witness: The total valuation for that year—1885—forty-six million, six hundred sixty thousand, nine hundred twenty-two dollars and the rate was 1.24.

Q. Now, what was it in 1886?

A. Forty-seven million, four hundred thirty-four thousand dollars, one hundred seventy-three dollars twenty-eight cents. And the rate 1.25 on one hundred dollars valuation.

Q. What was it in 1887?

A. I haven't got that book here. It is the book we are now printing.

Q. Now, I want to get it for the two years you (Mr. Co
118 and Mr. Peck) brought your certiorari; and for taxes 18
and 1887?

A. That is the last fall's taxes?

Q. Yes, sir.

A. Well, now I will have to go back and get another book.

After looking at the book witness said: Total valuation—
1.16 on one hundred dollars valuation, $47,847,830.36.

Q. Now then, I understand you take it from 1858 to and inclu
ing 1884, the valuation for purposes of taxation, was from 30 to
per cent. of the actual value, except The Union Railroad Company

A. Yes, sir.

Q. And that continued at thirty thousand?

A. Yes, sir.

Q. And since 1885 the property has been assessed as a rule
its actual value?

A. Yes, sir.

Q. Now, Mr. Ross, I want to know in 1886, when the rolls we
completed and verified and delivered over to the comptroller?

A. The first day of September, 1886—delivered to the comp
troller same day.

Q. Was the notice published, then?

A. Next day—second of September, after they completed th
roll.

Q. Now, the form of oath?

A. I have it.

Q. I want to put them in?

A. Form reads as follows: "We, the undersigned, do severall
depose and swear that we have set down in the foregoing assess
ment roll all real estate situated in the thirteenth ward of the city o
Troy, according to our best information, and that with the exceptio
of those cases, in which the value of the said real estate has bee
charged by reason of proof produced before us, we have estimate
the value of the said real estate, at the sums which a majorit
119 of the assessors have decided to be the full value thereof, an
also that the said assessment roll contains a true statement
of the aggregate amount of the taxable personal estate of each an
every person named in such roll, over and above the amount o
debts, due from such person respectively, and excluding such stock
as are otherwise taxable and such other property as is exempt by la
from taxation, at the full value thereof, according to our best judg
ment and belief.

MICHAEL A. TIERNEY,
EDWARD CARTER,
CHRISTIAN W. RAPP,
JAMES MALONEY,
General Assessors of the City of Troy.

Sworn before me, this 1st day of September, 1886.

E. OGDEN ROSS,
Comr. of Deeds, Troy.

Q Take 1887?
A. Completed 26th August, 1887, and turned over to the comptroller the same day.
Q. When was notice given by the assessors?
A. I think it came in next day. I think these were handed in at night. I think it was the next day they were published—the 27th.
Q. Have you that oath?
A. I have.

(See page 36.)

Q. The oaths of these two years were thirteen in number?
A. Yes, sir; one for each ward.
Q. And those were just alike except designating the ward?
A. That is all.

120 Mr. Parmenter: Now, I put in evidence provision of the city charter—Title 5, section 1 of the charter, which reads as follows:

The assessors of the city of Troy shall complete their assessment rolls and deliver the same to the comptroller, on or before the first day of September in each year, and the said comptroller shall copy the same and make out the city tax as soon as levied by the said common council, including therein the water rents and any unpaid assessments for local improvements, with the percentages added thereto, under the provisions of this act, in separate columns. The said comptroller shall deliver the said assessment roll to the order of the supervisors of the respective assessor district, or a majority of them, on or before the fifteenth day of October thereafter.

And another provision I want to put in requires the common council to levy the tax on or before the 15th of September in each year.

Mr. Peck: Our objection is continued to this, you know

Adjourned.

Summary.

Year.	Amt. of assessed valuation of taxable property.	Rate on $100 of valuation.	Total Amt. tax levied.	Valuation of Troy Union R. R. Co.	Tax T. U. R. R. Co.
1858.....	$12,819,195.00	$1.28	$155,028.18	$30,000	$384
1859.....	12,853,290.00	1.20	147,648.00	30,000	360
1860.....	13,001,615.00	1.14	142,507.20	30,000	342
1861.....	13,079,680.00	1.15	143,856.65	30,000	345
1884.....	15,511,683.00	3.08	476,373.61	30,000	924
1885.....	46,660,922.00	1.24	575,424.53	30,000	372
1886.....	47,434,173.28	1.25	592,359.78	500,000	6,250
1887.....	47,847,230.36	1.16	554,521.67	500,000	5,800

121 Supreme Court.

THE PEOPLE ex Rel. THE TROY UNION RAILROAD COMPANY

against

EDWARD CARTER and Others, as Assessors, and JOHN D. SPICER, Comptroller.

The defendants' counsel moves to dismiss or quash the writ of certiorari in this matter as against the defendants' assessors and also against the defendant comptroller upon the following grounds, in each case.

(1) Because when said writ was allowed the assessment rolls had been completed, verified by the oaths of the assessors and delivered to the city comptroller as required by law, and were not in possession of the said assessors nor under their jurisdiction or control.

(2) Because the city comptroller had no legal power or authority to alter or change any assessment or valuation of property appearing on said assessment rolls. That the same were delivered to said comptroller for the discharge by him of a ministerial duty prescribed by the charter of the city of Troy, viz: to copy the same and to make out or extend the city tax as soon as levied by the common council.

(3) Because said writ has been jointly issued against independent public officers, having no joint or common duties in making such assessments, but who act independently of each other in the discharge of their respective duties.

122 (4) Because the said writ is bad for multifariousness, and that the supposed agreement attached to the relator's petition purporting to have been executed by and between the city of Troy and the relator and other railroad companies on the first day of July 1858, was never before the assessors as evidence or otherwise, nor before said comptroller for any purpose whatever; and that its validity or invalidity or binding force may not be adjudged by the court upon the return to this writ as between the relators and these defendants. That said agreement, if valid or subsisting against the city of Troy would not conclude the assessors on the question of the true valuation of The Troy Union Railroad for the purposes of taxation.

(5) The relator has not complied with the requirements of the provisions of Sec. 2, title 4, Chap. 13, Part 1, of Revised Statutes (1st ed., 1036, Am. ed., 374), in giving the assessors the notice and statement as therein provided.

123 Supreme Court.

THE PEOPLE ex Rel. THE TROY UNION RAILROAD COMPANY

against

EDWARD CARTER, JAMES MALONEY, CHRISTIAN W. RAPP, and MICHAEL A. TIERNEY, General Assessors of the City of Troy, and John D. Spicer, Comptroller of the City of Troy.

Proposed Findings of Fact and Conclusions of Law on Behalf of the Defendants.

First. For the year 1886, the first four defendants were the General Assessors of the city of Troy, and defendant Spicer was the Comptroller of said city. It was the duty of the Assessors under the charter of said city to complete their assessment rolls and deliver the same to the said city Comptroller, on or before the first day of September in each year, and it then became the duty of said Comptroller to copy the said rolls, and to make out the city tax upon the valuation of property, appearing on said rolls, in separate columns when, the aggregate amounts of the city taxes including water rents and any unpaid assessments for local improvements, with the percentages added thereto, had been fixed and levied by the Common Council. It also became the duty of the Comptroller to deliver the assessment rolls to the order of the Supervisors of the respec-
124 tive assessor districts or a ma-ority of them, on or before the fifteenth day of October thereafter. Found.

Second. The property of the said relator was assessed and valued on said rolls for the purposes of taxation, at the aggregate sum of $500,000. For the same year the aggregate valuation of all the taxable property in said city, as listed on said rolls amounted to the sum of $47,434,173.28; and the rate of taxation thereon was one dollar and twenty-five cents on each $100, and the total city tax was $592,359.78. Found, except the aggregate sum of $783,984.00 instead of $500,000.

Third. The assessment rolls for the year 1886, were completed by the Assessors and handed over to the Comptroller of said city, on the first day of September, 1886. On that day the oath of the Assessors as required by the provisions of chapter 201 of the laws of 1885, was duly made and attached to the said assessment rolls at the end thereof. And due notice thereof, was published in the official newspapers of said city, commencing on the second day of September, 1886. And that since said last mentioned day, the said general assesors have not had possession or control of said assessment rolls nor any jurisdiction over the same. Found.

Fourth. The writ of certiorari in this case was allowed by the Court at Special Term on the 13th day of September, 1886, and entered in the clerk's office on that day, and was subsequently served on the defendants. Found.

Fifth. The relator is a domestic corporation and its taxable prop-

erty is in fact, of the value of $500,000. Its general business office is in the city of Troy, and all its property is within the corporate limits of the city of Troy. Found, except as to the value of which there is no proof outside of the assessment rolls.

125 Sixth. It does not manage or operate its said railroad, but the same belongs to four other railroad companies, who do mutually own and use the Troy Union Railroad, and its board of directors is composed of stockholders of said four other railroad companies. Found.

Seventh. Previous to the year 1885, the practice of the general assessors of Troy, in estimating the value of property for the purpose of taxation, was to list such property upon the assessment rolls, at from one-third to forty per cent. of the actual value, but the relator's said property for many years down to and including the year 1885, was listed at $30,000 under the supposition that the value of said railroad property for the purposes of taxation, had been fixed by law at the last above sum. But for the year 1885, all other taxable property in said city, for the purposes of taxation, was listed at its actual value. And for the year 1886, the said assessors listed the relator's property, as well as all other taxable property, at its actual value upon the assessment rolls. Found.

Eighth. For the year 1884, the whole of the taxable property of the city of Troy, was listed on said assessment rolls at a valuation of $15,511,683. And the rate of taxation for that year was $3.08 on $100 of valuation. And the relator's tax for that year on the valuation of $30,000 was the sum of $924. Found.

Ninth. Except as it appears on the assessment rolls, and by the return to said certiorari, there is no proof given or offered of the actual value of the property of the said relator. Nor any proof as to the rental value thereof. Found.

126 Tenth. For the year 1886, the relator neglected to make and deliver to the general assessors of the city of Troy, or to any one or more of them, the written statement required by section 2, of title 4 of chapter 13, of part first of the Revised Statutes, containing the matters prescribed by said section 2, nor any other notice or statement purporting to contain such matters. There is no proof that it made the statement.

Eleventh. It does not appear from the evidence produced on this trial, that the property of the said relator within the corporate limits of the city of Troy, was listed upon the assessment rolls of said city for the year 1886, at an over-valuation, nor at a higher proportionate valuation than other real or personal property on the same rolls by the same assessors. Declined for the reason that chapter 462, Laws of 1853, fixes its value for the purpose of assessment at the amount of the capital stock.

Twelfth. It does not appear from such evidence produced on the trial, that the said relator is or will be injured by such alleged illegal, erroneous or unequal assessment set forth in said writ. Declined.

Thirteenth. That the relator, John D. Spicer, as the comptroller of the city of Troy, upon the said assessment rolls, being turned over to him had no judicial duty to perform in reference to said rolls or

any valuation of property appearing on the same, that his duties in respect thereto were ministerial. Found.

Fourteenth. That as there was no evidence produced or offered on the trial, to contradict the statement in the return touching the value of the relator's said property, it must be regarded for the purpose of this trial that the valuation as stated in said return is an established fact; and that said property has not been listed
127 beyond its actual value. The return, however, in respect to the value of relator's said property is conclusive and cannot be contradicted. Declined.

Fifteenth. That the provisions of the alleged agreement made on the 3d day of December, 1852, by and between the city of Troy and the relator and four other railroad companies, if said agreement has not been annulled by the subsequent agreement between the same parties bearing date July 1, 1858, would not have been obligatory and binding on the assessors in discharging their duty to list the property of the relator on said assessment rolls, for the purposes of taxation, for the year 1886. That said agreement of 1852, so far as it directly or inferentially enjoined upon the city of Troy the obligation to limit the valuation of the relator's said property so as not to exceed the sum of $30,000, for the purposes of taxation was and is ultra vires. And the assessors of said city, in discharging their duties thereafter, and especially in the year 1886, were under no legal obligations to observe and keep any of the provisions of said agreement, in preparing the assessment rolls and listing thereon the property of said relator for the purpose of taxation. Declined.

Sixteenth. By the eighth clause of the agreement or contract between the city of Troy and the said relator and the said four other railroad companies, bearing date of July 1, 1858, produced in evidence, the previous contract between the same parties and dated December 3, 1852, was expressly annulled. Declined.

Seventeenth. The said contract of July 1, 1858, does not nor does any provision thereof, exempt the relator's said property or any part thereof or any portion of the value thereof, from taxation;
128 and that so far as it undertakes to bind the Common Council of said city of Troy or the municipal corporation itself, to join in an application to the legislature upon any contingency to exempt the Troy Union Railroad Company or its property from taxation upon an amount exceeding the then present amount of its capital stock, the same is illegal and ultra vires. Nor may such provisions in said contract control the action of general assessors of said city, in determining the value of the relator's said property for the purposes of taxation. Found.

Eighteenth. That chapter 462 of the Laws of 1853, is a private or local statute within the intent and meaning of section 16 of article 3 of the Constitution of the State. Found.

Nineteenth. That said chapter 462 of the Laws of 1853 being such private or local statute, is in violation of said section 16 of article 3 of the Constitution, because it embraces more than one subject neither of which is expressed in its title. Declined.

Twentieth. That the assessment or valuation complained of, was

made by the said assessors as public officers without bias or prejudice; and they are not chargeable with having acted with gross negligence, in bad faith or with malice. Found.

Twenty-first. That the writ of certiorari in this case should be quashed upon the merits with costs against the relator. Declined.

Twenty-second. As against the defendants, who are assessors of the city of Troy, the said writ of certiorari should be quashed with costs against the relator. Declined.

Twenty-third. That as against the defendant, who was the
129 comptroller of said city and a mere ministerial officer, the said writ of certiorari should be quashed with costs against the relator. Declined.

Twenty-fourth. Judgment is accordingly ordered against the said relator. Declined.

R. A. PARMENTER,
Attorney for Defendants,
15 *City Hall, Troy, N. Y.*

Supreme Court.

THE PEOPLE ex Rel. THE TROY UNION RAILROAD COMPANY

against

EDWARD CARTER, JAMES MALONEY, CHRISTIAN W. RAPP, and Michael A. Tierney, General Assessors of the City of Troy, and John D. Spicer, Comptroller of the City of Troy.

Take notice, That the defendants in the above-entitled proceeding brought to reduce the valuation of the Troy Union Railroad Company's property, as listed for the purposes of taxation, for the year 1886, have taken and filed exceptions to portions of the findings of the trial judge and to his refusals to find certain facts and conclusions of law, as requested by the attorney for the defendants on the trial, of which exceptions the following is a true copy, namely:

130 First. To that part of the fifth finding of fact in said decision, which declares that the eleventh general paragraph of the alleged agreement made July 1, 1858, was for a valuable consideration.

Second. To the eighth finding of fact in said decision, and to each part thereof.

Third. To the twelfth finding of fact in said decision and to every part thereof, and especially to the last clause of said finding.

Fourth. To the fourteenth finding of fact in said decision, and to every part thereof.

Fifth. To that part of the fifteenth finding of fact in said decision, which declares that the Troy Union Railroad "is simply tracks, road and a passenger station that are used and operated by steam by each of the railroads running steam trains in the city."

Sixth. To the nineteenth finding of fact in said decision, and to every part thereof.

Seventh. To the twentieth finding of fact in said decision and to every part thereof.

Eighth. They also except to the first conclusion of law in said decision, and to every part and provision thereof.

Ninth. To the second conclusion of law in said decision, and to every part thereof, directing judgment in favor of the said relator, and reducing the valuation of its said property to $30,000.

Tenth. To the refusal to find as requested by the defendant's eleventh request and to the reason assigned by the court for such refusal.

Eleventh. To the refusal to find as requested by the defendants' twelfth request.

Twelfth. To the refusal to find as requested by the defendants' fourteenth request.

131 Thirteenth. To the refusal to find as requested by the defendants' fifteenth request.

Fourteenth. To the refusal to find as requested by the defendants' sixteenth request.

Fifteenth. To the refusal to find as requested by the defendants' nineteenth request.

Sixteenth. To the several refusals to find as matter of law, as requested by the defendants in their twenty-first, twenty-second, twenty-third and twenty-fourth requests, and to each of said refusals so to find.

Seventeenth. To the judgment entered herein, on the 17th day of January, 1889, and to every part of said judgment.

Dated, January 25, 1889.

Yours, etc.,

R. A. PARMENTER,
Atty. for Dfts., 15 City Hall, Troy, N. Y.

To John H. Peck, Esq., Attorney for Relator.

To the Supreme Court of the State of New York:

Your petitioner, the Troy Union Railroad Company respectfully shows to this court that the General Assessors of the city of Troy, in the county of Rensselaer, who have prepared the assessment rolls for the year 1886, are Edward Carter, James Maloney, Michael A. Tierney and Christian W. Rapp; that upon the assessment rolls prepared by them immediately prior to the first day of August, 1886, appeared the following assessments affecting your petitioner, that is to say:

On book containing proposed assessment of persons and property in the third ward:

132 Names of Persons: Troy Union Railroad Company, president and directors of.

Description of property in the fourth ward—real; incorporated companies.

Lands of road-bed and adjacent thereto, in the second and third wards, as shown by City Engineer's map with superstructure, depot, buildings and appurtenances, $6,100,000.00.

On book containing proposed assessments of persons and property in the fourth ward:

Names of Persons: Troy Union Railroad Company, president and directors of.

Description of property in the fourth ward—real; incorporated companies.

Lands of road-bed and adjacent thereto, in the fourth, seventh and tenth wards, as shown by the City Engineer's map, with superstructure, masonry, bridges and appurtenances, $200,000.00.

On book containing proposed assessments of persons and property in the eleventh ward.

Names of Persons: Troy Union Railroad Company, president and directors of.

Description of property in the eleventh ward—real; incorporated companies.

Land on road-bed and adjacent thereto, in the first, sixth, eighth, ninth, eleventh, twelfth wards, as shown by City Engineer's map, with superstructures, masonry, bridges and appurtenances, $200,000.00.

That while said assessors were in session to hear parties deeming themselves aggrieved, and to review and correct the assessment rolls aforesaid, your petitioner appeared before the said Assessors and objected to such assessments, that they were unequal, erroneous by reason of over valuation, and illegal, and your petitioner at the same time specified grounds of the illegality and of the other objections; that on or about the 31st day of August, 1888, the said assessors completed and verified their said rolls and delivered the same to William J. Roche, Comptroller of the city of Troy, and on or about the same day published a notice of the final completion, verification and delivery of said assessment rolls as aforesaid; that by said assessment rolls so completed and delivered assessments of property of your petitioner appear as follows, that is to say:

133

On the book containing assessments of persons and property in the third ward.

Names of Persons: Troy Union Railroad Company, president and directors of.

Description of property in the third ward—real; incorporated companies.

Lands of road-bed and adjacent thereto, in the second and third wards as shown by City Engineer's map, with superstructure, depot, buildings and appurtenances, $500,000.00.

On the book containing assessments of persons and property in the fourth ward:

Names of Persons: Troy Union Railroad Company, president and directors of.

Description of property in the fourth ward—real; incorporated companies.

Lands of road-bed and adjacent thereto, in the fourth, seventh and

tenth wards, as shown by city engineer's *map*, with superstructure, masonry, bridges and appurtenances, $133,984.00.

On the book containing assessments of persons and property in the eleventh ward:

134 Name of persons: Troy Union Railroad Company, president and directors of.

Description of property in eleventh ward—real; incorporated companies.

Lands of road-bed and adjacent thereto, in the first, sixth, eighth, ninth, eleventh, and twelfth wards, as shown by city Engineer's map, with superstructure, masonry, bridges and appurtenances, $150,000.00.

That fifteen days have not elapsed since the giving of said notice of the final completion, verification and delivery of said assessment rolls; that such final assessment is erroneous by reason of over valuation and is unequal in that such assessment has been made at a higher proportionate valuation than other real or personal property on the same roll by the same officers and that such assessment is illegal, and your petitioner specifies as grounds of such alleged illegality and other objections, the following facts, which are alleged on information and belief. That said company was organized on the 21st day of July, 1851, under and by virtue of an act of the legislature of the State of New York, entitled "An act to authorize the city of Troy and certain railroad corporations to subscribe for and become the owners of stock for the construction of a railroad through the whole or some portion of the city of Troy," passed June 20, 1851, and the acts therein mentioned as the same were amended or supplemented; that the capital stock of said railroad company finally became the property of four other railroad companies, whose railroads then entered the city of Troy, and is still held by each director, as a former qualification; that the amount of the capital stock of said

135 Troy Union Railroad Company at the time of its organization, was and has ever since been the sum of thirty thousand dollars; that its entire road-bed and property is located within the tenth, seventh, fourth, third, second, first, eighth, eleventh and ninth wards of said city and it has no real property in any other ward or wards of said city; that its property consists of a railroad, road-bed, and tracks, with a passenger station or Union depot, and a few parts of city lots not included within the road-bed; that in constructing said railroad such masonry and other superstructures were built and have since been maintained as were and are necessary to the safe and convenient operation of said tracks as a railroad; that said railroad depot and other property is not productive of any profit to your petitioner, and is not operated by it or under its authority for a price or rental, and it receives no fares or tolls from those who use it; that the expense of maintaining and supervising said railroad and tracks with the structures appertaining thereto are paid by the steam railroad companies whose tracks enter said city in certain agreed proportions; that said company does not own or operate any locomotives or cars, or in any way conduct the usual or ordinary business of a railroad

company, or receive the profits or emoluments thereof; that said Troy Union Railroad Company was formed and said railroad constructed at the solicitation and urgent request of merchants and other citizens of Troy, and would not have been undertaken, without the assistance and co-operation of the city of Troy in its operative capacity; that at that time there was no steam railroad bridge across the Hudson river; that all cars for passengers and freight entering or passing to or through the central parts of the city of Troy were drawn by
136 horses; that the tracks were laid through the most crowded thoroughfares of business and obstructed their use; that each railroad was operated by a different corporation and in diverse interest; that it was considered important to the business and prosperity of the city, that the tracks should be removed from the streets then used to the then comparatively valueless and secluded line at the foot of the hill, in the easterly part of the city, where they could be operated by steam, and to provide a bridge over the river on which steam trains of cars could be drawn across; it was proposed in this way to create in Troy a center for railroad business crossing the Hudson river between the east and the west, that the city of Troy was then the owner of The Troy & Schenectady Railroad, then very unprofitable, but thus to be made part of the only through line crossing the Hudson river and largely enhanced in value; that the companies owning the other railroads were reluctant or unable to incur the necessary expense and burdens consequent upon so extensive and unusual a work, the value of which to them was speculative and problematical; that before and after the passage of an act of 1851, already mentioned, and the organization of The Troy Union Railway Company, negotiations were entered into with the railroad companies aforesaid to induce them to adopt the scheme; that among other considerations to procure the consent of such railroad companies, the city of Troy in its corporate capacity, agreed to advance the money necessary for the construction of the new railroad, by issuing its bonds for a long loan secured only by a mortgage of the contemplated railroad, and an indemnity by the railroad companies aforesaid, then of very small pecuniary responsibility and further that the burden from
137 taxation of the property of The Troy Union Railroad Company should not be greater than the then amount of its capital stock, to wit: the sum of thirty thousand dollars; that such railroad companies whose cars entered the city of Troy, as aforesaid, refused to make the necessary outlay, or incur the necessary obligations unless a fair consideration could be insured, and the negotiations with the city were finally consummated in a contract bearing date December 3, 1852, of which a copy is hereto annexed and is hereby referred to as a part of this petition, that afterwards in view of the advantage to the people of the state of the construction of such a railroad, and to induce the railroad companies interested to consent to the same and in pursuance of said contract the legislature of the State of New York passed an act entitled "An act providing for the taxation of the property of The Troy Union Railroad Company in Troy," passed June 24, 1853, that relying upon the said contract and said last mentioned statute the said railroad with its depot and structures

were completed and have since been maintained, that many circumstances, including the term of said contract itself, conspired to prevent the success of said railroad and the attainment of the objects for which it was constructed, and its maintenance became so onerous that the terms of said contract were modified by the execution of a new contract bearing date the first day of July, 1858, of which a copy is also hereto annexed and which is also hereby referred to as a part of this petition, that in further consideration of the building of such railroad, the city of Troy procured the passage of a law by the legislature of the State of New York, closing part of Sixth
138 street in said city, for the purpose of affording depot grounds and passed an ordinance for the same purpose; it opened a new street west of the depot now called Union street; that it adopted and approved the location and plans for the construction of said railroad, that it issued its bonds to the amount of about $707,000.00 to furnish funds to build the same; that the construction of said railroad was a work for and in the interest of the city of Troy, and initiated to advance its interests which the railroads concerned, without consideration and agreements as to taxes and other assistance would not and could not have undertaken; that one of the principal elements of the consideration for which the railroads became parties to the enterprise was that the property acquired and used for the purpose should not be open to assessment at more than a fixed value; that the new company should not be taxed in large sums, at high rates for property held by it at the request of the city as a substitute for facilities adequate to their business needs, but not so advantageous to the city; that after the construction of said new railroad and the abandonment of the tracks in the business streets by the railroad companies, and the assuming by them of largely increased expenditures for their terminal facilities in Troy, in pursuance and on account of the laws and agreements aforesaid, the assessment of its property was fixed and has ever since until at this time, been maintained at a valuation of thirty thousand dollars; that the road-bed, buildings and tracks of said company are in many places upon, along and across public streets and alleys of said city, of which the railroad has no ownership, and which it occupies only in common with the public; that in other instances they occupy the whole or parts of city
139 lots and the tracks and road-bed extend across blocks of city lots, with no access from the streets and alleys of the city except at each extremity for a width of sixty feet; that much of said road-bed is in deep cuts and excavations with nearly perpendicular sides; that the assessable value of the separate parcels would differ enormously much of it having little, if any, market value; that the assessment thereof in each assessor's district is as of a single parcel of land; that in each case the same consists of many distinct parcels, separated by streets and alleys, and without contiguity, and made up of city lots and parts of city lots, into which the tracts of the city are subdivided and known on city maps by lot numbers; that said Union depot is erected in part over a street closed to the public as aforesaid; that so far as the same can be ascertained the parcels of land belonging to the company are assessed at an unequal and higher

rate than other *other* real estate in its vicinity and on the same o other assessment rolls, but they are not so assessed and described as to enable said company to ascertain the particulars thereof; that the sums actually paid for such real estate of the company was not more than about $395,000, and that the principal office of said company is in its Union depot aforesaid. And your petitioner further shows that it is and will be injured by such alleged illegal, erroneous and unequal assessment.

Wherefore your petitioner prays for a review of such assessment and for an order that such assessment be stricken from the rolls as illegal and for such other or further relief in the premises as to the court shall seem meet in the premises and it is empowered to grant.

TROY UNION R. R. CO.,
By DAN. ROBINSON, *Manager.*

140 STATE OF NEW YORK,
County of Rensselaer, ss:

Daniel Robinson, being duly sworn, says that he is managing director of the Troy Union Railroad Company; that the foregoing petition is true to his own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters he believes — to be true.

DAN ROBINSON.

Sworn before me September 13, 1886.

J. C. BEHN,
Com. of Deeds, Troy, N. Y.

Contract of 1852.

This instrument made this third day of December, in the year one thousand eight hundred and fifty-two, between the Mayor, Recorder, Aldermen and Commonalty of the city of Troy, party of the first part, the Troy Union Railroad Company, party of the second part, the Rensselaer & Saratoga Railroad Company, party of the third part, the Schenectady & Troy Railroad Company, party of the fourth part, the Hudson River Railroad Company, party of the fifth part, and the Troy & Boston Railroad Company, party of the sixth part, witnesses.

Whereas, in pursuance of the provision of an act of Legislature of the state of New York, entitled "An act to authorize the city of Troy and certain railroad corporations to subscribe for and become the owners of stock for the construction of a railroad through the whole or some portion of the city of Troy," passed June 20

141 1851, The Troy Union Railroad Company has been organized for the purpose of constructing a railroad through certain portions of the city of Troy;

And Whereas, The Commissioners appointed in and by said act have duly located the said railroad according to the survey thereof a copy of which is hereto annexed and such location has been ap

proved by a majority of all the members elected to the Common Council of the city of Troy, in pursuance of said act;

And Whereas, The several railroad companies now running their trains to the city of Troy are desirous to subscribe for and become the owners of the capital stock of the Troy Union Railroad Company upon certain terms and conditions; now, therefore.

This instrument witnesses, that the parties hereto for the purpose of effecting the objects hereinbefore mentioned and in consideration of the several covenants and agreements herein contained to be performed by each of the said parties, respectively, have covenanted and agreed, and do hereby covenant and agree, each with the other, as follows, to wit:

1. The said party of the first part hereby assent and agree that the Troy Union Railroad Company may construct, maintain and operate a railroad in the city of Troy with two or more tracks, and in, upon or across any streets, alleys or highways in the said city of Troy, as such railroad has been located by the said Commissioners and according to the map and survey thereof, a copy of which survey is hereto annexed, and upon the grades indicated on the profile of the said railroad, which has been signed by a majority of the directors of the Troy Union Railroad Company and filed in the office of the clerk of the county of Rensselaer. But nothing herein con-
142 tained is to interfere with the rights or claims of owners of property adjoining said road to damages or otherwise by reason of any change of grade, or to make the said party of the first part liable therefor.

2. If the Troy Union Railroad Company shall deem it advisable to take land in the city of Troy on each side of Sixth street for a passenger house, the said party of the first part hereby agree that this may be done and that the course of Sixth street at that point shall be changed so as to pass along either or both sides of the passenger house as may be desired by the Troy Union Railroad Company, and that if deemed necessary by the Troy Union Railroad Company the Common Council of the city of Troy will apply to the legislature for the passage of a law allowing such change.

3. The Rensselaer & Saratoga Railroad Company, the Schenectady & Troy Railroad Company, the Hudson River Railroad Company and the Troy & Boston Railroad Company shall each subscribe for an equal amount of the capital stock of the Troy Union Railroad Company, so as to fill up the present capital of thirty thousand dollars, and the present stockholders in the Troy Union Railroad Company (except the directors) shall transfer their stock in that company to the Rensselaer & Saratoga Railroad Company, the Schenectady & Troy Railroad Company, the Hudson River Railroad Company and the Troy & Boston Railroad Company equally, so that each of said companies shall hold an equal amount of the said capital stock; and each stockholder in the Troy Union Railroad Company shall be repaid the amount of the payments made by him on account of such stock with interest, and the directors shall, from time

to time, transfer the stock standing in their names to their
143 successors in office, respectively.

4. The said party of the first part agree to issue their bonds at 6 per cent interest, payable in not less than ten nor more than twenty years from the date thereof, to an amount sufficient to raise money to pay the whole amount of the cost of the railroad, which shall be constructed by the Troy Union Railroad Company, including the passenger house. And the committee appointed by Common Council of the city of Troy to negotiate such bonds, by certain resolutions passed by the said Common Council on the eleventh day of October, 1852, shall negotiate the same and shall pay to the Troy Union Railroad Company the net proceeds of such bonds as the same shall be required by the Troy Union Railroad Company for the construction of their said railroad and passenger house.

5. The Troy Union Railroad Company agree to execute to said party of the first part a mortgage upon their road, buildings, appurtenances, property rights and franchises, conditioned for the payment of the whole amount of the said bonds, with the interest thereon, as the same shall respectively become due.

6. The Rensselaer & Saratoga Railroad Company, the Schenectady and Troy Railroad Company, the Hudson River Railroad Company and the Troy and Boston Railroad Company, each covenant to execute to the said party of the first part a contract to indemnify the said party of the first part against the payment of one-fourth of said bonds and of the interest thereon, provided that the income of the Troy Union Railroad Company shall be insufficient to pay the same. But nothing in such contracts contained shall bind either of said companies to the payment in any event of a
144 greater sum than one hundred and twenty-five thousand dollars ($125,000), and interest thereon, including the stock subscribed by them.

7. The Troy Union Railroad Company shall for the first five years after the date of such bonds raise each year by tolls upon the several railroad companies using the railroad of the Troy Union Railroad Company a sum equal to 6 per cent upon the cost of the railroad and passenger house of the Troy Union Railroad Company, to be applied in payment of the interest on the said bonds as the same shall become due, and thereafter shall raise in the same manner a sum equal to 10 per cent upon such cost, 6 per cent, or so much thereof as may be necessary to be applied in payment of the interest on the said bonds as the same shall become due, and the residue to be applied in payment of the principal of such bonds.

8. The Troy Union Railroad Company shall also raise in the same manner such further sum as may be required for the objects of its incorporation and for the purposes mentioned in this instrument. And the amount so raised in each year shall be sufficient to discharge all the liabilities of the Troy Union Railroad Company which shall accrue or become due during the year, and shall be applied to that object.

9. Such tolls upon the said companies shall be raised as follows:

1. The north side of Hoosick street shall be styled the Troy & Boston Railroad terminus.

2. The east end of the bridge of the Rensselaer & Saratoga Railroad Company, over the Hudson river, shall be styled the Rensselaer & Saratoga Railroad terminus.

3. The west end of said bridge shall be styled the Schenectady & Troy Railroad terminus.

4. And the intersection of the Troy Union Railroad with the Troy & Greenbush Railroad shall be styled the Hudson River Railroad terminus.

5. The whole road shall be deemed to be eight thousand four hundred and twenty (8,420) feet in length.

6. Such tolls shall be charged upon each of said companies in proportion to the distance which the cars used by each of said companies shall travel upon the railroad of the Troy Union Railroad Company—that is, an equal sum shall be paid by each company for every foot actually traveled upon the said railroad by any car used by such company—providing that each car used by the Schenectady & Troy Railroad Company, or the Hudson River Railroad Company, or the Troy & Boston Railroad Company and passing from the Troy & Boston Railroad terminus, or the Hudson River Railroad terminus, or the Schenectady & Troy Railroad terminus to the passenger house or vice versa, shall be deemed to pass over half the road. And, provided further, that each car used by the Schenectady & Troy Railroad Company, or the Hudson River Railroad Company, or the Troy & Boston Railroad Company, and passing from the Schenectady & Troy Railroad terminus, to any point on the railroad of the Troy Union Railroad Company other than the passenger house, or vice versa, shall pay for the distance actually traveled between such point and that terminus.

7. The passenger house shall be located between Grand Division street and Congress street in said city.

8. Every passenger car used by either of the parties to this instrument and running to or from the city of Troy, shall run to the passenger house, or pay at least for running to and from the passenger house.

9. But the Rensselaer and Saratoga Railroad Company, the Schenectady and Troy Railroad Company, the Hudson River Railroad Company and the Troy & Boston Railroad Company, shall each pay to the Troy Union Railroad Company at least one-tenth of the annual sum to be raised by that company, in pursuance of the provisions of this instrument, including tolls.

10. Every car running to the passenger house shall be deemed to run to the center point between the north and south lines of the passenger house.

11. Every locomotive tender, passenger car, baggage car and freight car shall be each deemed a car under the above provisions; but each locomotive with its tender and boiler carried upon the same frame and wheels shall be deemed one car only.

12. The several companies shall each settle and pay the said tolls monthly to the Troy Union Railroad Company.

10. The Rensselaer and Saratoga Railroad Company, the Schenectady and Troy Railroad Company, the Hudson River Railroad Company and the Troy and Boston Railroad Company, each agree to pay the said tolls to the Troy Union Railroad Company as above provided.

11. The Rensselaer and Saratoga Railroad Company, the Schenectady and Troy Railroad Company, the Hudson River Railroad Company and the Troy and Boston Railroad Company, may each use the railroad of the Troy Union Railroad Company for the passage of cars propelled by animals, steam or any mechanical power at a rate of speed which shall not exceed fifteen miles per hour.

147 12. The Troy Union Railroad Company shall erect swing bars in the streets at the points where the same are intersected by the track of the Troy Union Railroad Company, and shall close the same at the time of the passage of trains. And if the Troy Union Railroad Company shall fail to construct such swing bars or to close the same as above provided, the party of the first part may cause the same to be done, and the Troy Union Railroad Company, shall pay to the party of the first part the expense incurred by the party of the first part in constructing and maintaining such swing bars. And such payment shall be the only penalty incurred by any of the parties to this instrument by reason of the failure of the Troy Union Railroad Company to construct or close such swing bars.

13. The Troy Union Railroad Company agree to construct a railroad with two or more tracks upon the courses and routes indicated by the said survey, provided that the said company shall only be obliged to construct such railroad upon one of the routes indicated by the said survey between the Troy and Greenbush Railroad and the point designated in said survey as Fourth street Junction.

14. The Rensselaer and Saratoga Railroad Company hereby agree to construct, as soon as practicable, an addition to their bridge over the Hudson River, in such manner as to adapt it for the passage of locomotives and trains, unless prevented by judicial action or process of law or other proceeding in law or equity.

15. The cars used by the Schenectady and Troy Railroad Company or the Hudson River Railroad Company or the Troy and Boston Railroad Company may cross the said bridge, subject

148 to all proper rules and regulations of the Rensselaer and Saratoga Railroad Company, but the Rensselaer and Saratoga Railroad Company shall in all cases have priority of right in the use of said bridge, provided that the freight trains of no road shall interfere with or obstruct the running of the passenger trains of any road parties to this instrument. And if any legal impediments shall prevent the modification of said bridge in such manner as to permit the passage of locomotives, such cars shall be permitted to cross the said bridge by horse power, and the terms shall be as in this instrument provided. And the Troy Union Railroad Company shall pay monthly to the Rensselaer and Saratoga Railroad Company the tolls charged by the Rensselaer and Saratoga Railroad Company for the passage of such cars across the said bridge, and in case the Troy Union Railroad Company and the Rensselaer and Saratoga Railroad

Company cannot agree as to rate of said tolls, they shall be fixed and determined by Leonard R. Sargent and Edmund French of the city of Troy and George A. Simmons of Keesville, in the county of Essex. The decision of any two of them, all being present, shall be conclusive. But before such decision the parties shall be entitled to be heard before such persons by their counsel or otherwise. In case the said Leonard R. Sargent shall refuse to act in making such decision, the Rensselaer and Saratoga Railroad Company shall, within thirty days after receiving written notice from the Troy Union Railroad of such refusal, appoint a substitute to act in his place. And in case of the failure of the Rensselaer and Saratoga Railroad Company to make such appointment, the other two persons shall appoint such substitute. And in case the said Edmund French shall
149 refuse to act in making such decision, the Troy Union Railroad Company shall, within thirty days after receiving written notice from the Rensselear and Saratoga Railroad Company of such refusal, appoint a substitute to act in his place. And in case of the failure of the Troy Union Railroad Company to make such appointment, the other two persons shall appoint such substitute. And in case the said George A. Simmons shall refuse to act in making such decision, the said Leonard R. Sargent and Edmund French shall appoint a substitute to act in his place. Provided that such cars shall not run upon any railroad not now completed and in operation (other than the roads of the parties to this instrument) without the consent of the Rensselaer and Saratoga Railroad Company. And provided further that the foregoing provisions as to the said bridge shall apply only to the several railroad companies which are now parties to this instrument. And provided further that such cars shall not be entitled to cross said bridge until the rates of such tolls shall be fixed and determined.

16. The said bridge is not to be deemed for any purpose a part of the track of the Troy Union Railroad Company, but is to remain in all respects the exclusive property of the Rensselaer and Saratoga Railroad Company.

17. The party of the first, part agree that the Common Council of the city of Troy shall join in an application to the legislature of the state of New York, that the Troy Union Railroad Company be exempt from taxation upon an amount exceeding the present amount of its capital stock, and that no tax shall be imposed upon the Rensselaer and Saratoga Railroad Company on account of the pro-
150 posed addition to the said bridge. And if such law shall not be passed, the Common council of the city of Troy shall refund to the Troy Union Railroad Company an amount equal to the city taxes imposed on the Troy Union Railroad Company for any valuation exceeding its present capital stock; and shall also refund to the Rensselaer and Saratoga Railroad Company an amount equal to the city taxes imposed on the Rensselaer and Saratoga Railroad Company on account of the said bridge for any valuation exceeding the present valuation.

18. The Rensselaer and Saratoga Railroad Company, the Troy and Boston Railroad Company and the Schenectady and Troy Rail-

road Company, do hereby each agree with the Hudson River Rai
road Company, as lessees of the Troy and Greenbush Railroad Com
pany to afford to the Hudson River Railroad Company every facili
and advantage in all respects for uniting the Hudson River Rai
road with their several roads, and for transacting business over the
several roads which may at the same time be afforded to any othe
railroad company running trains from Troy or Albany to the cit
of New York.

19. And the Hudson River Railroad Company, as lessees as afore
said, hereby agree with the Rensselaer and Saratoga Railroad Com
pany, the Schenectady and Troy Railroad Company and the Tro
and Boston Railroad Company respectively, to afford to each of sai
companies respectively, every facility and advantage in all respect
for uniting their respective roads with the Troy and Greenbush Rai
road and with the Hudson River Railroad, and for transacting bus
ness over such roads which may at the same time be afforded by th
Hudson River Railroad Company to any other company run
151 ning trains between the cities of Troy or Albany, and any
place north or west of either of those cities.

20. The Rensselaer and Saratoga Railroad Company, the Sche
nectady and Troy Railroad Company, the Hudson River Railroa
Company and the Troy and Boston Railroad Company, upon th
terms mentioned in this instrument, shall have equal rights and
privileges in the track and passenger house of the Troy Union Rai
road Company.

21. The stock and property of The Troy Union Railroad Compan
shall belong equally to The Rensselaer and Saratoga Railroad Com
pany, The Schenectady and Troy Railroad Company, The Hudso
River Railroad Company and The Troy and Boston Railroad Com
pany, subject to said mortgage and the payment of said bonds.

22. Any other railroad company which now or hereafter shal
have its trains running from the city of Troy, may, on equal term
and with equal privileges use the railroad tracks and passenger hous
constructed by The Troy Union Railroad Company, such equal term
being, that if there shall have been paid any part of the principal o
said bonds, or any sum raised for a sinking fund to pay such bond
the first company so coming in shall refund to the companies wh
have paid the same one-fifth of the amount so paid, which shall b
divided among the companies who contributed to such payment
in proportion to the amounts contributed by each. And the com
pany so coming in, shall also execute a contract similar to the con
tracts executed by the other companies, to indemnify the party of th
first part against the payment of one-fifth of such bonds, and of th
interest thereon. After which, the company so coming in shall b
subject to the provisions and be entitled to the privileges and
152 immunities specified in this instrument, except those relatin
to the said bridge. And any other company so coming i
afterwards, shall, upon similar terms, be entitled to the same pri
ileges and immunities, and be subject to the same provisions.

23. The Troy Union Railroad Company shall prescribe all th

necessary police regulations as to the use of the said track and passenger house.

24. In case The New York and Troy Railroad Company will convey to The Troy Union Railroad Company, all real estate owned by The New York & Troy Railroad Company in the city of Troy, and the rights acquired by the latter company under its contract with the party of the first part, The Troy Union Railroad Company agree that they will thereupon pay to The New York and Troy Railroad Company, the amount paid by The New York and Troy Railroad Company for procuring such real estate and the interest thereon, and the amount paid for surveys in the city of Troy and the attorney fees incident to procuring the same, provided that the net amount received by The New York & Troy Railroad Company for rents of such real estate shall be deducted from the amount so as to be paid to them as aforesaid.

25. There shall be no other railroad track between Hoosick street and Adams street in the city of Troy, except tracks from The Troy Union Railroad track to the freight houses of the respective roads, which tracks shall be used for the transportation of local freights only, and tracks from The Troy Union Railroad track for the accommodation of trains, and tracks south of Liberty street to connect The New York & Harlem or New York & Troy Railroad with The Troy Union Railroad, and tracks to connect the tracks on the said bridge with the Troy Union Railroad. Nothing in this section shall
153 be construed to prevent the use of said tracks for the necessary handling and transfer of through freight from the cars of one road to another.

26. The Rensselaer & Saratoga Railroad Company may acquire the title to the land between the west line of River street and the said bridge, and in such case the said bridge for all the purposes of this instrument shall be deemed to terminate on the west line of River street, and The Rensselaer and Saratoga Railroad Company may connect the tracks on the said bridge with their local freight house, if located north of Federal street and west of River street. If The Troy Union Railroad Company shall become the owners of such land before The Rensselaer and Saratoga Railroad Company shall acquire the title thereto such title shall not be acquired by The Rensselaer and Saratoga Railroad Company without making compensation to The Troy Union Railroad Company for such land and any improvements thereon.

27. At all future elections The Rensselaer and Saratoga Railroad Company, The Schenectady and Troy Railroad Company, The Hudson River Railroad Company and The Troy and Boston Railroad Company shall each be entitled to designate and have three directors in the Troy Union Railroad Company, and the remaining director shall be elected or appointed only by unanimous vote. In case any other railroad company shall hereafter be entitled to the privileges and immunities mentioned in this instrument each of the railroad companies entitled to such privileges and immunities shall then be entitled to designate and have two directors in The Troy Union Rail-

road Company and the residue shall be elected or appointed only by the unanimous vote.

154 28. Nothing in this instrument contained shall be construed to give any company running trains directly or by connection with any other road or roads to the city of New York any of the privileges and immunities on or over The Troy and Greenbush or Hudson River Railroads which are conceded herein to The Rensselaer and Saratoga Railroad Company, The Schenectady and Troy Railroad Company or The Troy and Boston Railroad Company.

In witness whereof, the party of the first part, in pursuance of a resolution of the common council of the city of Troy, duly passed at a meeting of the said common council and the other parties to this instrument in pursuance of a resolution of the board of directors of each of said companies, respectively, duly passed at a meeting of each of said boards of directors, respectively, have executed this instrument by causing their respective corporate seals to be hereunto affixed, and have caused the same to be signed by the mayor of the city of Troy and by the president of each of said railroad companies, respectively.

GEO. GOULD, [L. S.]
Mayor of the City of Troy.
D. T. VAIL, [L. S.]
Prest. Troy Union R. R. Co.
ED. SCHRIVER, [L. S.]
Pres. Rens. and Sar. R. R. Co.
RUSSELL SAGE, [L. S.]
Pres. Schenectady and Troy R. R. Co.
E. D. MORGAN, [L. S.]
Pres. Hudson River R. R. Co.
JARED S. WEED, [L. S.]
Pres. Troy and Boston R. R. Co.

155 *Survey Referred to in the Foregoing Instrument.*

Description of the Survey of the Location of the Troy Union Railroad Company.

Beginning at a point in the city of Troy near the easterly end of the Rensselaer and Saratoga Railroad bridge over the Hudson river, which point is situated in the westerly boundary line of the lot now owned by James Morrison, at a distance of twenty-four feet and four inches from the southerly line of the same, and running thence on a course south forty-eight degrees and fifty-seven minutes east, crossing River street two hundred and sixty-three feet to a point near the easterly line of River street, designated as River street junction, thence on the course above mentioned one hundred and sixty-four feet; thence on a curve to the right of six hundred and twenty feet radius, crossing north Second street and Federal street three hundred and twenty-two feet to the south line of Federal street; thence south

eighteen degrees and fifty minutes east forty-four feet; thence on a curve to the right of five hundred feet radius, crossing Grand Division street three hundred and sixteen feet to a point in the center of Sixth street ninety-four feet from the southerly line of Grand Division street, designated as Sixth street junction; thence along the center line of Sixth street south seventeen degrees and twenty-six minutes west two thousand and seventy-four feet to a point where the center line of Sixth street would intersect the southerly line of Ferry street, thence on a curve to the right of nine hundred and ninety-
156 seven feet radius, four hundred feet; thence south forty degrees and twenty-six minutes, west three hundred and fifty-eight feet; thence on a curve to the right of fourteen hundred and thirty-two feet radius, two hundred and forty-two feet; thence south fifty degrees and six minutes, west six hundred and five feet to a point near the easterly line of Fourth street, designated as Fourth street junction; thence on a curve to the right of eight hundred and forty feet radius, seven hundred and eighty feet; thence on a curve to the left of seven hundred and fifty feet radius, six hundred and eighty feet; thence on a curve to the left of one thousand and twenty-two feet radius, six hundred feet to a point in the track of the Troy and Greenbush Railroad on the north line of the Poestenkill.

Then beginning at a point near the easterly line of Fourth street, designated above as Fourth street junction, and running thence south fifty degrees and six minutes west three hundred and forty feet; thence on a curve to the right of twenty-two hundred and thirty-two feet radius, seven hundred and fifty feet; thence on a curve to the left of eighteen hundred and sixty-nine feet radius, sixteen hundred and seventy feet, to a point in the track of the Troy and Greenbush Railroad about four hundred feet from the southerly line of Madison street.

Then beginning at a point in the center of Sixth street heretofore designated as Sixth street junction and running thence along the center of said Sixth street north seventeen degrees and twenty-six minutes east forty-nine feet; thence on a curve to the right of seven hundred and forty feet radius, one hundred and eighty-five feet to a point in the center of north Third street, north thirty-one degrees and forty six minutes east, east six hundred and forty-four
157 feet; thence on a curve to the right of fourteen hundred and thirty-two feet radius, sixty-five and a half feet to a point designated as north Third street junction; thence continuing the last mentioned curve of fourteen hundred and thirty-two feet radius, two hundred and seventy-three feet; thence north forty-five degrees and nineteen minutes east one hundred and seventy-two feet; thence on a curve to the left of fourteen hundred and thirty-two feet radius, six hundred and thirty-three feet; thence north twenty degrees east seven hundred and ten feet to the north line of Hoosick street.

Then beginning at a point near the easterly line of River street heretofore designated as River street junction, and running thence on a curve to the left of five hundred and forty-six feet radius,

nine hundred feet to a point in north Third street, heretofore designatde as north Third street junction.

D. T. VAIL,
Prest. Troy Union R. R. Co.
E. D. MORGAN,
Prest. Hudson River R. R. Co.
JARED S. WEED,
Prest. Troy & B. R. R. Co.
GEO. GOULD,
Mayor of Troy,
E. R. SCHRIVER,
Prest. R. and S. R. R. Co.
R. SAGE, *President.*

158 STATE OF NEW YORK,
County of Rensselaer, ss:

On this eleventh day of December, A. D. 1852, before me personally came George Gould, Esquire, the mayor of the city of Troy, to me known, who, being by me duly sworn, did depose and say: That he resided in the city of Troy, in said county; that he was the mayor of the said city of Troy; that he knew the corporate seal of the Mayor, Recorder, Aldermen and Commonalty of the City of Troy; that the seal affixed to the foregoing instrument opposite his name was such corporate seal; that it was so affixed by the resolution and order of the Common Council of the said city of Troy, and that he signed his name thereto by the like resolution and order as the mayor of the said city of Troy.

CHARLES R. RICHARDS,
Commissioner of Deeds, Troy.

STATE OF NEW YORK,
County of Rensselaer, ss:

On this eleventh day of December, A. D. 1852, before me personally came D. Thomas Vail, Esquire, the president of the Troy Union Railroad Company, to me known, who, being by me duly sworn, did depose and say: That he resided in the city of Troy, in said county; that he was the president of the Troy Union Railroad Company; that he knew the corporate seal of said company; that the seal affixed to the foregoing instrument opposite his name was such corporate seal, and that it was so affixed by order of the Board of Directors of said company, and that he signed his name thereto by the like order as president of said company.

CHARLES R. RICHARDS,
Commissioner of Deeds, Troy.

159 STATE OF NEW YORK,
County of Rensselaer, ss:

On this fourteenth day of December, A. D. 1852, before me personally came Edmund Schriver, Esquire, the president of the

Rensselaer and Saratoga Railroad Company, to me known, who, being by me duly sworn, did depose and say: That he resided in the city of Troy in said county; that he was president of the Rensselaer and Saratoga Railroad Company; that he knew the corporate seal of the said company; that the seal affixed to the foregoing instrument opposite his name was such corporate seal; that it was so affixed by order of the board of directors of said company, and that he signed his name thereto by the like order as president of the said company.

JAMES FORSYTH,
Commissioner of Deeds, Troy.

STATE OF NEW YORK,
County of Rensselaer, ss:

On this fifteenth day of December, A. D. 1852, before me personally came Russell Sage, Esquire, the president of the Schenectady and Troy Railroad Company, to me known, who, being by me duly sworn, did depose and say: That he resided in the city of Troy in said county, that he was president of the Schenectady and Troy Railroad Company; that he knew the corporate seal of the said company; that the seal affixed to the foregoing instrument opposite his name was such corporate seal; that it was so affixed by order of the board of directors of the said company, and that he signed his name thereto by the like order as president of the said company.

JAMES FORSYTH,
Commissioner of Deeds, Troy.

160 STATE OF NEW YORK,
County of Rensselaer, ss:

On this fourteenth day of December, A. D. 1852, before me personally came Jared S. Weed, Esquire, the president of the Troy and Boston Railroad Company, to me known, who, being by me duly sworn, did depose and say: That he resided in the city of Troy in said county; that he was the president of the Troy and Boston Railroad Company; that he knew the corporate seal of the said Company; that the seal affixed to the foregoing instrument opposite his name was such corporate seal; that it was so affixed by order of the board of directors of the said company, and that he signed his name thereto by the like order as president of the said company.

JAMES FORSYTH,
Commissioner of Deeds, Troy.

STATE OF NEW YORK,
City and County of New York, ss:

On this thirteenth day of December, A. D. 1852, before me personally appeared Edwin D. Morgan, Esq., the president of the Hudson River Railroad Company, to me known, who, being by me duly sworn, did depose and say: That he resided in the city and county of New York; that he was president of the Hudson River Railroad

Company; that he knew the corporate seal of said company; that the seal affixed to the foregoing instrument opposite his name was such corporate seal; that it was so affixed by order of the board of directors of the said company, and that he signed his name thereto by the like order as president of the said company.

EDMD. ELMENDORF, JR.,
Commissioner of Deeds.

161 *Contract of* 1858.

This instrument, made this first day of July, in the year one thousand eight hundred and fifty-eight, between the Mayor, Recorder, Aldermen and Commonalty of the City of Troy, party of the first part, the Troy Union Railroad Company, party of the second part, the Rensselaer & Saratoga Railroad Company, party of the third part, the New York Central Railroad Company, party of the fourth part, the Hudson River Railroad Company, party of the fifth part, and the Troy and Boston Railroad Company, party of the sixth part:

Witnesses: Whereas in pursuance of the provisions of an act of the legislature of the State of New York, entitled "An act to authorize the city of Troy, and certain railroad corporations, to subscribe for and become the owners of stock for the construction of a railroad through the whole, or some portion of the city of Troy; passed June 20th, 1851." The Troy Union Railroad Company was organized for that purpose, and has constructed a railroad through certain portions of the city of Troy.

And, whereas, the party of the first part has commenced a suit in the Supreme Court of the State of New York, against The Troy Union Railroad Company, The Rensselaer & Saratoga Railroad Company, The New York Central Railroad Company, The Hudson River Railroad Company, and The Troy and Boston Railroad Company, to enforce the foreclosure of the mortgage executed by the Troy Union Railroad Company to the party of the first part, bearing date the first day of December, 1852, and executed on or about the sixteenth day of the same month, recorded in the office of the clerk of the county of Rensselaer, in book of mortgages, No. 66,
162 pages 79, 80 and 81 and on the 31st day of December, 1852, and the several guarantees executed by or on behalf of the remaining parties, accompanying the same.

Now, therefore, the parties hereto, for the purpose of settling the matters involved in said suit, and for the purpose of reforming the contract entered into by, or on behalf of the above-named parties, bearing date the third day of December, 1852, adopt this instead of, and in place of the said contract, which is hereby annulled; and in consideration of the several covenants and agreements herein contained, to be performed by each of said parties respectively, have covenanted and agreed, and do hereby covenant and agree, each with the other, as follows, to wit:

First. The said party of the first part hereby assent and agree, that The Troy Union Railroad Company may continue, maintain and

operate, their railroad in the city of Troy, as now located and constructed, and according to the map and survey thereof, a copy of which survey is hereto annexed, and upon the grades indicated on the profile of the said railroad, which has been signed by a majority of the former directors of The Troy Union Railroad Company and filed in the office of the clerk of the county of Rensselaer; but nothing in this contract is to interfere with the rights or claims of owners of property adjoining said roads or tracks, to damages, or otherwise, by reason of any change of grade, or to make the said party of the first part liable therefor; nor shall the said party of the first part, in any event, or under any circumstances, be made liable to pay any portion of the expenses whatever, as hereinafter provided to be paid by the said railroad companies, parties hereto, for the support
163 or maintenance of the property of The Troy Union Railroad Company, including the rent or toll of the Rensselaer & Saratoga Railroad Company's bridge, or for any other purposes whatsoever.

Second. The party of the first part hereby agree, that The Troy Union Railroad Company may continue to occupy, as heretofore, the land on each side of Sixth street, for a passenger house, with the course of Sixth street, as at that point changed, so as to pass along either, or both sides of the passenger house, as may be desired by The Troy Union Railroad Company.

Third. The Troy Union Railroad Company shall raise, by monthly assessments, all the sums necessary to pay its expenses of every kind, including the rent of the bridge, hereinafter mentioned, and all debts due to others than the party of the first part, incurred since the 1st of July, 1858, and expenses incurred since the 1st of July 1858.

Fourth. The Rensselaer and Saratoga Railroad Company, The New York Central Railroad Company, The Hudson River Railroad Company, and The Troy and Boston Railroad Company, each covenant and agree to assume and pay to The Troy Union Railroad Company, monthly, one-fourth part of said assessment, on presentation; and it is herein provided, that if any of said companies make a default in the payment of any assessment, when so presented for the space of thirty days, The Troy Union Railroad Company, in addition to all other legal remedies may exclude such defaulting railroad company from all uses of The Troy Union Railroad, its tracks, passenger house and other property, until payment thereof; notwithstanding such exclusion or proceedings, whether by the modes provided by this contract, or through any legal or equitable proceedings by
164 any or either of the said parties hereto said defaulting road shall continue at all events, and wholly irrespective of its use of the said Troy Union Railroad Company's tracks, passenger house and other property, to pay its assessments during the continuance of this contract.

Fifth. The Rensselaer and Saratoga Railroad Company, The New York Central Railroad Company, The Hudson River Railroad Company, and The Troy and Boston Railroad Company shall each have equal rights and privileges in the track, passenger house (separate

rooms therein as now occupied) and other property of The Troy Union Railroad Company, and that part of The Rensselaer and Saratoga Railroad Company's bridge now used for railroad purposes, without restriction, except such reasonable and uniform rules, regulations, and rent charges for offices, as The Troy Union Railroad Company, may, from time to time, prescribe therefor; and also subject to all reasonable and uniform rules and regulations of The Rensselaer and Saratoga Company, as to their bridge. The said bridge is not to be deemed for any purpose a part of the track of The Troy Union Railroad Company, but is to remain in all respects the exclusive property of The Rensselaer and Saratoga Railroad Company.

Sixth. The Troy Union Railroad Company shall pay to the Rensselaer and Saratoga Railroad Company, the annual rent of eleven thousand five hundred dollars, in equal monthly installments for the use of said bridge, by all the railroad companies who are or may be authorized to use the same under the terms of this contract, and the bridge shall be continued, kept in good repair and wholly maintained by the Rensselaer and Saratoga Railroad Com-
165 pany; and it is agreed by and between the Rensselaer and Saratoga Railroad Company, and the Troy Union Railroad Company, that the said bridge tolls, or rents, shall be credited to the Rensselaer and Saratoga Railroad Company, by the Troy Union Railroad Company, monthly, on their books, as cash.

Seventh. The New York Central Railroad Company, and the Hudson River Railroad Company, shall each own one-fourth part, and the Rensselaer and Saratoga Railroad Company, and the Troy and Boston Railroad Company, shall each own one-fifth part of the railroad, passenger house, and all other property, rights and franchises of the Troy Union Railroad Company, subject to the lien of the mortgage thereon to the city of Troy.

Eighth. And it is further covenanted and agreed by and between the said parties hereto, that the said mortgage heretofore executed by the Troy Union Railroad Company to the said party of the first part shall be and remain in full force and effect.

It being expressly covenanted and agreed by and between the several parties above named, that nothing herein contained shall be deemed, taken or construed to effect, or in any way or manner impair the validity, force and effect of said mortgage, as a security for the payment of so much of the original principal and interest secured by said mortgage as is assumed and agreed to be paid in settlement of said suit by instruments bearing even date herewith, executed severally by the parties of the third, fourth, fifth and sixth parts respectively, to the party of the first part, but that said mortgage shall be taken, deemed and held as a security for that purpose. The party of the first part being at liberty to make such separate
166 contracts with each of said companies, as to the portion of the debt and interest due from each of them, and to make such arrangements for the payment thereof as the said party of the first part shall deem advisable.

In case of foreclosure of the aforesaid mortgage, on account of any

default of the payment of principal or interest, as aforesaid, the proceeds of any sale had in pursuance thereof, shall be applied ratably, in proportion to the several amounts assumed of the original debt, by each of said railroad companies, so that each of said railroad companies be credited on the respective amount of said debt assumed by it, in proportion to the respective amount of said debt assumed by it, until its respective amounts be paid, if sufficient for that purpose, and after payment of its respective amount of said debt, then the balance, if any, of its ratable share shall be paid to it.

And it is further covenanted and agreed, by and between the parties aforesaid, that the said Troy Union Railroad Company shall, at any time, upon the request of the said party of the first part, execute and deliver unto the said party of the first part, a further mortgage upon its capital stock, franchises and property, for such amount, not exceeding the whole amount owing from said several railroad companies to the said party of the first part, to be held as a further security for the performance of the covenants, conditions and agreements, provided to be kept, observed and performed on the part of the said several railroad companies to and with the party of the first part.

And it is herein further provided, that if, at any time, default shall be made by any of the said railroad companies, parties hereto, in the payment of any installment of principal or interest to
167 the city of Troy, as provided in this settlement, by reason of the insolvency of said defaulting company, or if upon suit brought therefor against said company, and upon judgment being recovered therefor by the said city of Troy, and execution issued thereupon being returned unsatisfied, in whole or in part, then and thereupon, and in either case, the right of such defaulting railroad company to use said Troy Union Railroad Company's tracks and other property shall cease, and thereupon its title and interest in said Union Railroad shall vest in the city of Troy. And the city of Troy, in addition to all other legal remedies, may apply to the proper court for an injunction order to restrain such railroad so in default from using the Troy Union Railroad Company's tracks, passenger house and other property, or for such other relief as the court may deem just and proper.

Provided, however, if at any time during the continuance of the Troy Union Railroad Company, such defaulting road, or its successors, shall assume and pay all the liabilities which then may have accrued, or which may thereafter accrue against such defaulting company, to the city of Troy, together with interest thereon, or if any railroad corporation, parties hereto, which may be reorganized upon its dissolution by its creditors or bond holders, shall assume and pay all liabilities which then may have accrued, or which may thereafter accrue against said company to the city of Troy, as agreed in this settlement, such defaulting company, or its successors or any company reorganized as aforesaid, shall be restored to all the rights, ownership and privileges in the said Troy Union Railroad, which said defaulting railroad or reorganized company had prior to such default.

168 Ninth. The Rensselaer & Saratoga Railroad Company, the New York Central Railroad Company, the Hudson River Railroad Company, and the Troy & Boston Railroad Company, may each use the railroad of the Troy Union Railroad Company for the passage of cars propelled by animals, steam or any mechanical power, at a rate of speed which shall not exceed fifteen miles per hour.

Tenth. The Troy Union Railroad Company shall erect swing bars in the streets at the points where the same are intersected by the track of the Troy Union Railroad Company, and shall close the same at the time of the passage of trains, and if the Troy Union Railroad Company shall fail to construct such swing bars, or to close the same, as above provided, the party of the first part may cause the same to be done, and the Troy Union Railroad Company shall pay to the party of the first part the expense incurred by the party of the first part in constructing, closing and maintaining such swing bars. And such payment shall be the only penalty incurred by any of the parties to this instrument, by reason of the failure of the Troy Union Railroad Company to construct or close such swing bars.

Eleventh. The party of the first part agree, that if the law passed by the legislature of the State of New York, June 24, 1853, relative to the taxation of the property of the Troy Union Railroad Company in Troy, shall, at any time be repealed, the Common Council of the city of Troy shall join in an application to the legislature of the State of New York, that the Troy Union Railroad Company be exempt from taxation upon an amount exceeding the present amount of its capital stock; and that no tax be imposed upon the Rensselaer
169 and Saratoga Railroad Company on account of the proposed addition to the said bridge, and if such law shall not be passed, the Common Council of the city of Troy, shall refund to the Troy Union Railroad Company, an amount equal to the city taxes imposed upon the Troy Union Railroad Company, for any valuation exceeding its present capital stock, and shall also refund to the Rensselaer & Saratoga Railroad Company an amount equal to the city taxes imposed on the Rensselaer & Saratoga Railroad Company on account of the said bridge, for any valuation exceeding the present valuation.

Twelfth. The Rensselaer & Saratoga Railroad Company, the Troy and Boston Railroad Company, and the New York Central Railroad Company do hereby each agree, with the Hudson River Railroad Company, as lessees of the Troy and Greenbush Railroad Company, to afford to the Hudson River Railroad Company every facility and advantage in all respects for uniting the Hudson River Railroad with their several roads, and for transacting business over their several roads, which may at the same time be afforded to any other railroad company running trains from Troy or Albany to the city of New York.

Thirteenth. And the Hudson River Railroad Company as lessees as aforesaid, hereby agree, with the Rensselaer & Saratoga Railroad Company, the New York Central Railroad Company, and the Troy and Boston Railroad Company, respectively, to afford to each of said companies, respectively, every facility and advantage, in all respects for uniting their respective roads with the Troy and Greenbush Rail

road, and with the Hudson River Railroad, and for transacting business over such roads, which may at the same time be afforded
170 by the Hudson River Railroad Company, to any other company running trains between the cities of Troy or Albany and any place north or west of either of those cities.

Fourteenth. The stock of the Troy Union Railroad Company shall belong one-fourth part each to the New York Central Railroad, the Hudson River Railroad, the Rensselaer and Saratoga Railroad and the Troy and Boston Railroad Companies. And the Troy Union Railroad Company shall issue to each of said four roads full scrip for the amount of capital stock now subscribed by each of them, subject to the mortgage aforesaid. Whenever another road shall, by the terms of this contract, obtain an ownership in the Troy Union Railroad Company, it shall be entitled to one-fifth of said capital stock; and each of said four above-named roads shall transfer such portion of its scrip to said new road as to make the five roads each the owner of one-fifth part of said capital stock, and in like manner for any additional road.

Fifteenth. Any other railroad company which shall hereafter run its trains to or from the city of Troy, may on equal terms and with equal privileges and equal ownership, use the railroad tracks, passenger house and other property constructed by the Troy Union Railroad Company, and shall have equal ownership therein, and also on equal terms use the said Rensselaer and Saratoga Railroad Company's railroad bridge, which equal terms shall be construed to mean the payment of its numerical proportion of bridge tolls (each company being counted one) and also its equal proportion of the original debt created for the construction of the Troy Union Railroad, and
171 thereafter the like equal proportion of all assessments for maintaining the same. And so much of said proportion of the said original debt as shall be assumed to be paid by any incoming road, shall be paid to the city of Troy, to be applied by its as follows: One-fourth part thereof upon the obligations held by the city against the New York Central Railroad Company; and after the said obligations are paid, the remainder of said fourth part to be paid the New York Central Railroad Company, one-fourth part thereof upon the obligations held by the city of Troy against the Hudson River Railroad Company; and after said obligations are paid, the remainder of said fourth part to be paid to the Hudson River Railroad Company. One-fourth part thereof, firstly upon that portion of the balance of their one-fourth of the original debt not assumed by the Rensselaer and Saratoga Railroad Company till paid, and thereafter, upon the obligations held by the city of Troy against said Rensselaer and Saratoga Railroad Company, and the remaining one-fourth part thereof, firstly, upon that portion of the balance of their one-fourth of the original debt not assumed by the Troy and Boston Railroad Company till paid, and thereafter, upon the obligations held by the city of Troy against said Troy and Boston Railroad Company.

Sixteenth. The Troy Union Railroad Company shall prescribe all necessary police regulations, as to the use of the said track and passenger house.

Seventeenth. There shall be no other railroad tracks between Ha
sick street and Adams street, in the city of Troy, except tracks fr
the Troy Union Railroad track to the freight house of the respecti
roads, which tracks shall be used for the transportation of local freig
only, and tracks from the Troy Union Railroad track for t
172 accommodation of trains, and tracks south of Liberty str
to connect the New York and Harlem, or New York and Tr
Railroad with the Troy Union Railroad, and tracks to connect t
tracks on the said bridge with the Troy Union Railroad. Nothi
in this section shall be construed to prevent the use of said tracks f
the necessary handling and transfer of through freight from the c
of one road to another.

Eighteenth. At all future elections, the Rensselaer and Sarato
Railroad Company, the New York Central Railroad Company, t
Hudson River Railroad Company, and the Troy and Boston Railro
Company shall each be entitled to designate and elect three direct
in the Troy Union Railroad Company, and the Mayor of the city
Troy shall be ex-officio the remaining director. In case any ot
railroad company shall hereafter be entitled to the privileges a
immunities mentioned in this instrument, each of the railroad co
panies entitled to such privileges and immunities shall then be e
titled to designate and elect two directors in the Troy Union Railro
Company, and the residue shall be elected or appointed only by
unanimous vote, except the Mayor of the city of Troy.

Nineteenth. Nothing in this instrument contained shall be c
strued to give any company running trains directly, or by connecti
with any other road or roads, to the city of New York, any of t
privileges and immunities on or over the Troy or Greenbush, or Hu
son River Railroads, which are conceded herein to the Rensselaer
and Saratoga Railroad Company, the New York Central Railro
Company or the Troy and Boston Railroad Company.

In witness whereof, the party of the first part, in pursua
173 of a resolution of the Common Council of the city of Tr
duly passed at a meeting of the said Common Council, and t
other parties to this instrument, in pursuance of a resolution of t
Board of directors of each of said companies respectively, duly pas
at a meeting of each of said boards of directors respectively, have c
cuted this instrument by causing their respective corporate seals to
hereunto affixed, and have caused the same to be signed by the Ma
of the city of Troy and by the president of each of said railroad co
panies, respectively.

ARBA REED, *Mayor.* [L. S.]
ELIAS PLUM, [L. S.]
Prest. Troy Union R. R. Co.
ED. SCHRIVER, *President.* [L. S.]
D. TH. VAIL, *President.* [L. S.]
ERASTUS CORING. [L. S.]

Survey Referred to in the Foregoing Instrument.

Description of Survey of the Location of The Troy Union R. R.

Beginning at a point in the city of Troy near the easterly end of The Rensselaer and Saratoga Railroad bridge over the Hudson river, which point is situated in the westerly boundary line of the lot, now owned by James Morrison, at a distance of twenty-four feet and four inches from the southerly line of the same, and running thence on a course south forty-eight degrees and fifty-seven minutes
174 east, crossing River street two hundred and sixty-three feet to a point near the easterly line of River street, designated as River street junction, thence on the course above mentioned one hundred and sixty-four feet; thence on a curve to the right of six hundred and twenty feet radius crossing North Second street and Federal street three hundred and twenty-two feet to the south line of Federal street; thence south eighteen degrees and fifty minutes east forty-four feet; thence on a curve to the right of five hundred feet radius, crossing Grand Division street three hundred and sixteen feet to a point in the center of Sixth street ninety-four feet from the southerly line of Grand Division street, designated as Sixth street junction; thence along the center line of Sixth street south seventeen degrees and twenty-six minutes west two thousand and seventy-four feet to a point where the center line of Sixth street would intersect the southerly line of Federal street, thence on a curve to the right of nine hundred and ninety-seven feet radius, four hundred feet; thence south forty degrees and twenty-six minutes, west three hundred and fifty-eight feet; thence on a curve to the right of fourteen hundred and thirty-two feet radius, two hundred and forty-two feet; thence south fifty degrees and six minutes, west six hundred and five feet to a point near the easterly line of Fourth street designated as Fourth street junction; thence on a curve to the right of eight hundred and forty feet radius, seven hundred and eighty feet; thence on a curve to the left of seven hundred and fifty feet radius, six hundred and eighty feet; thence on a curve to the left of one thousand and twenty-two feet radius, six hundred feet to a point in the track of The Troy and Greenbush Railroad on the north line of the Poestenkill.

175 Then beginning at a point near the easterly line of Fourth street, designated above as Fourth street junction and running thence south fifty degrees and six minutes west three hundred and forty feet; thence on a curve to the right of twenty-two hundred and thirty-two feet radius, seven hundred and fifty feet; thence on a curve to the left of eighteen hundred and sixty-nine feet radius, sixteen hundred and seventy feet, to a point in the track of The Troy and Greenbush Railroad about four hundred feet from the southerly line of Madison street.

Then beginning at a point in the center of Sixth street heretofore designated as Sixth street junction, and running thence along the center of Sixth street north seventeen degrees and twenty-six minutes east forty-nine feet; thence on a curve to the right of seven

hundred and forty feet radius, one hundred and eighty-five feet to a point in the center of North Third street; thence along the center line of North Third street, north thirty-one degrees and forty-six minutes east, six hundred and forty-four feet; thence on a curve to the right of fourteen hundred and thirty-two feet radius, sixty-five and a half feet to a point designated as North Third street junction; thence continuing the last mentioned curve of fourteen hundred and thirty-two feet radius, two hundred and seventy-three feet; thence north forty-five degrees and nineteen minutes east one hundred and seventy-two feet; thence on a curve to the left of fourteen hundred and thirty-two feet radius, six hundred and thirty-three feet; thence north twenty degrees east seven hundred and ten feet to the north line of Hoosick street.

Then beginning at a point near the easterly line of River
176 street heretofore designated as River street junction, and running thence on a curve to the left of five hundred and forty-six feet radius, nine hundred feet to a point in North Third street heretofore designated as North Third street junction.

STATE OF NEW YORK,
County of Rensselaer, ss:

On this fifteenth day of November, A. D. 1858, before me personally came Arba Reed, Esquire, the mayor of the city of Troy, to me known, who, being by me duly sworn, did depose and say: That he resided in the city of Troy, in said county; that he was the mayor of the said city of Troy; that he knew the corporate seal of the mayor, recorder, aldermen and commonalty of the city of Troy; that the seal affixed to the foregoing instrument opposite his name was such corporate seal; that it was so affixed by the resolution and order of the common council of the said city of Troy, and that he signed his name thereto by the like resolution and order as the mayor of the said city of Troy.

JOHN T. LAMPORT,
Commissioner of Deeds, Troy, N. Y.

STATE OF NEW YORK,
County of Rensselaer, ss:

On this eleventh day of November, A. D. 1858, before me personally came Elias Plum, Esquire, the president of The Troy Union Railroad Company, to me known, who, being by me duly sworn, did depose and say: That he resided in the city of Troy, in said county; that he was the president of The Troy Union Railroad Company; that he knew the corporate seal of the said company; that the
177 seal affixed to the foregoing instrument opposite his name was such corporate seal, and that it was so affixed by order of the board of directors of said company, and that he signed his name thereto by the like order as president of said company.

JAMES FORSYTH,
Com. of Deeds, Troy, N. Y.

STATE OF NEW YORK,
County of Rensselaer, ss:

On this twelfth day of November, A. D. 1852, before me personally came Edmund Schriver, Esquire, the president of The Rensselaer and Saratoga Railroad Company, to me known, who, being by me duly sworn, did depose and say: That he resided in the city of Troy in said county; that he was president of The Rensselaer and Saratoga Railroad Company; that he knew the corporate seal of the said company; that the seal affixed to the foregoing instrument opposite his name was such corporate seal; that it was so affixed by order of the board of directors of the said company, and that he signed his name thereto by the like order as president of said company.

MILES BEACH,
Com. of Deeds, Troy, N. Y.

STATE OF NEW YORK,
County of Albany, ss:

On this thirteenth day of November, A. D. 1858, before me personally came Erastus Corning, Esq., the president of The New York Central Railroad Company, to me known, who, being by me duly sworn, did depose and say: That he resided in the city of Albany, in said county; that he was the president of The New York
178 Central Railroad Company; that he knew the corporate seal of the said company; that the seal affixed to the foregoing instrument opposite his name was such corporate seal; that it was so affixed by order of the board of directors of the said company; and that he signed his name thereto by the like order as president of the said company.

J. STEENBERGH,
Com. of Deeds, Albany.

STATE OF NEW YORK,
County of Rensselaer, ss:

On this fifteenth day of November, A. D. 1858, before me personally came D. Thomas Vail, Esquire, the president of The Troy and Boston Railroad Company, to me known, who, being by me duly sworn, did depose and say: That he resided in the city of Troy in said county; that he was the president of The Troy and Boston Railroad Company; that he knew the corporate seal of the said company; that the seal affixed to the foregoing instrument opposite his name was such corporate seal; that it was so affixed by order of the board of directors of the said company, and that he signed his name thereto by the like order as president of the said company.

JAMES FORSYTH,
Com. of Deeds, Troy.

STATE OF NEW YORK,
City and County of New York, ss:

On this ninth day of November, A. D. 1858, before me personally appeared Samuel Sloan, Esquire, the president of the Hudson River Railroad Company, to me known, who, being by me duly
179 sworn did depose and say, that he resided in the city of Brooklyn; that he was the president of the Hudson River Railroad Company; that he knew the corporate seal of said company; that the seal affixed to the foregoing instrument opposite his name was such corporate seal; that it was so affixed by order of the board of directors of said company, and that he signed his name thereto by the like order as president of the said company.

CALVIN NOYES,
Com. of Deeds.

Writ of Certiorari—Carter Case.

Supreme Court, Rensselaer County.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of THE TROY UNION RAILROAD COMPANY

against

EDWARD CARTER, JAMES MALONEY, CHRISTIAN W. RAPP, and MICHAEL A. TIERNEY, General Assessors of the City of Troy, and John D. Spicer, Comptroller of said City.

The People of the State of New York to Edward Carter, James Maloney, Christian W. Rapp, and Michael A. Tierney, general assessors of the city of Troy, and John D. Spicer, comptroller of said city:

180 Whereas, we have been informed by the petition of the Troy Union Railroad Company, that it claims to be aggrieved and injured by and on account of an illegal, erroneous and unequal assessment of its property made in or about July and August, 1886, by the general assessors of the city of Troy aforesaid, and of the grounds thereof.

We therefore command you and each of you that you certify to the Supreme Court at a Special Term thereof to be held at the court house, in the city of Troy, on the 4th day of October, 1886, at the opening of the court on that day, a true copy of the tax or assessment rolls of the city of Troy, finally completed and delivered to the comptroller of the city of Troy on the first day of September, 1886, or certified or sworn copies thereof, and also to certify and return such records, proceedings and papers or certified or sworn copies thereof and such other facts as may be pertinent and material to show the value of the property assessed and why the assessment of the property of the relator is for a greater amount than thirty

thousand dollars and the grounds for the valuation as they appear on said assessment rolls, as fully and amply as you can so that said court may cause to be done what should be done in the premises.

Witness, Hon. Charles R. Ingalls, one of the justices of the Supreme Court, this 13th day of September, 1886.

SHEPARD TAPPEN, *Clerk.*

181 *Return—Carter Case.*

Supreme Court.

THE PEOPLE ex Rel. THE TROY UNION RAILROAD COMPANY

against

EDWARD CARTER, JAMES MALONEY, CHRISTIAN W. RAPP, and MICHAEL A. TIERNEY, General Assessors of the City of Troy, and John D. Spicer, Comptroller of the City of Troy.

To the Supreme Court of the State of New York:

In obedience to a writ of certiorari granted in the above-entitled proceeding on the 13th of September, 1886, upon the petition of the above-named relator, the undersigned general assessors of the city of Troy and the comptroller of said city do hereby make the following return to said writ, namely:

First. They admit and aver that upon the completed assessment rolls of said city of Troy, handed over by said assessors to said comptroller on the first day of September, 1886, the real property of the said relator, situate in said city of Troy, was assessed upon said rolls in the aggregate sum of $783,984, as stated in the petition of said relator, which was less than the actual value thereof, that the value of said real property appearing on the field books of said assessors prior to the 1st of August, 1886, were rough estimates of value to
182 be reviewed and corrected by them, before the delivering the assessment rolls to the comptroller of the city of Troy, and the same were so reviewed and corrected, and reduced to the figures above stated, that said assessment rolls are on file in the office of the comptroller of said city, open to inspection and will be produced, if required, on the hearing of said certiorari.

Second. They further certify and return the assessors upon their own judgment and belief and the comptroller on information and belief that the assessments on said rolls against said property of the relator are not erroneous by reason, as is alleged, in said petition, of over-valuation nor is it unequal in that the same has been made at a higher proportionate valuation than other real or personal property on the same roll made by the said assessors, and they controvert and deny the allegation in said petition contained, that the said assessment is illegal by reason of any supposed grounds set forth in the said petition.

Third. These defendants further certify and return that the have no knowledge or information sufficient to form a belief as t the general matters stated in said petition touching the motive and reasons, which led to the erection of the Troy Union Railroa Company and the building of the Troy Union Railroad throug said city and, therefore, these defendants deny the same; and the make the same return as to the supposed motives and reasons whic led to the making of said two agreements at-ached to the said pet tion, and therefore, the allegations in that respect stated in sai petition are also denied; nor have these defendants any knowledge o information sufficient to form a belief as to any other state-
183 ments contained in said petition, in regard to the inducement or reasons which actuated the city of Troy to perform any o the acts in said petition stated; nor as to the allegations of said pet tion that the construction of said railroad was a work for and i the interest of the city of Troy and initiated to advance its interest which the railroads concerned without consideration and agre ments as to the taxation and other assistance would and could no have undertaken; nor as to the allegations that one of the principa elements of the consideration for which such railroads became par ties to the enterprise was that the property acquired by the relato should not be open to assessment at more than a fixed value and therefore, they deny all such allegations, and these defendants certif upon information and belief that the city of Troy, as a municipality had no power or authority to fix the valuation of the real propert of the relator for the purposes of taxation in said city and the county of Rensselaer for all time to come at $30,000, nor at any other sum below the fair value therefor.

Fourth. These defendants controvert and deny the allegation in said petition to the effect that the parcels of land belonging t the Troy Union Railroad Company are assessed at an unequal and higher rate than other real estate in its vicinity, and on the same assessment rolls.

Fifth. These defendants further certify and return that the rea estate of the relator has largely increased in value since the creation of its company and the building of said railroad and is of much greater value now to the stockholders owning the same than esti mated by the assessors upon said assessments rolls.

Sixth. That at the time of construction of said rail
184 road, and at the date of the two instruments attached to the relator's said petition, the practice of the assessors of the city of Troy, in fixing the valuation of real property in said city for taxation, was to list it upon the assessment rolls at about one-third its actual market value, and that system continued in force in the city of Troy until the year 1885, when the assessors following the statute in that regard, changed the practice and thereupon adopted the rule of valuation prescribed by the laws of this State; and they did list and since have listed all such real property at its fair market value, and such is the basis of valuation of real estate for the pur poses of taxation pursued by these assessors for the year 1886.

Seventh. These defendants controvert and deny each and every

statement contained in the relator's said petition inconsistent with or contradictory of any averment in this return.

Eighth. These defendants further certify and return upon information and belief, that the seventeenth paragraph of the agreement bearing date December 3d, 1852, attached to said petition, and the eleventh paragraph of the agreement bearing date July 1, 1858, also attached to the relator's said petition are, and each of them is, invalid, illegal, null and void, and against public policy and that the city of Troy and its Common Council and Mayor did not jointly or severally possess legal authority to bind, restrain and forever enjoin the said municipal government, or its Common Council, or its Assessors from the proper exercise and discharge of their respective functions by the terms, conditions and provisions of said pre-
185 tended agreements, set forth in the before mentioned petition and that said chapter 472 of the Laws of 1853 is also inoperative and void.

All of which is respectfully submitted.

Dated, Troy, October 30th, 1886.

MICHAEL A. TIERNEY,
CHRISTIAN W. RAPP,
JAMES MALONEY,
EDWARD CARTER,
Assessors of the City of Troy.
JOHN D. SPICER,
Comptroller of the City of Troy.

RENSSELAER COUNTY, *ss:*

Edward Carter, James Maloney, Christian W. Rapp and Michael A. Tierney, and John D. Spicer, being sworn, say, and each for himself says, that he has heard read the foregoing return by them subscribed as public officers, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

MICHAEL A. TIERNEY.
CHRISTIAN W. RAPP.
JAMES MALONEY.
EDWARD CARTER.
JOHN D. SPICER.

Sworn to before me this 6th day of November, 1886.

FRED S. PARMENTER,
Notary Public, Rens. Co., N. Y.

186 *Decision—Carter Case.*

Supreme Court.

THE PEOPLE ex Rel. THE TROY UNION RAILROAD COMPANY

against

EDWARD CARTER, JAMES MALONEY, CHRISTIAN W. RAPP, General Assessors of the City of Troy, and John D. Spicer, Comptroller of the City of Troy.

A writ of certiorari under the statutes in such case made and provided having been granted at the special term of the Supreme Court returnable on the fourth day of October, 1886, to review the assessment of and upon the property of the Troy Union Railroad Company in the city of Troy, in the year of 1886, said writ having been duly served and said defendants having appeared and made and filed their return, and an order of reference having been made to John E. Kelly Esquire, to take and report the evidence, and the proceeding having been brought on to a trial at a special term of this court held at the Supreme Court chambers in the city of Hudson on the fourteenth day of July, 1888, and after hearing Mr. R. A. Parmenter of counsel for the defendants, and Mr. Esek Cowen and Mr. John H. Peck, of counsel for the relator, and due deliberation had thereon, the court doth made its decision, and finds the following:

187 *Facts.*

First. That in the year 1851, the Legislature of the State of New York enacted, in and by chapter 255 of the session laws of that year, among other things that the corporation of the city of Troy and the several railroad corporations whose railroads then or thereafter should come to the city of Troy, or which had or should have their business terminus in or run their trains to and from said city, might subscribe for and become the owners of stock in a railroad corporation to be organized under an act entitled "An act to authorize the formation of railroad corporations," passed April 2, 1850, for construction of a railroad with one or more tracks through the whole or a portion of said city; but there should not be more than one railroad through that part of the city of Troy lying between Adams and Federal streets; the city of Troy should not subscribe for or take more than one-fourth part of the capital stock of the corporation to be organized; the corporation of the city of Troy was thereby authorized to borrow upon the bonds of said city, a sum not exceeding the cost of said railroad, but no bonds should be issued therefor by the corporation of said city until said corporation should by the several railroad corporations which were authorized to subscribe for stock and by a mortgage of the railroad so to be constructed, be fully indemnified and made harmless against the payment of any bonds and the interest thereon which said city of Troy might issue under the authority

thereby conferred; and all railroads which then or thereafter should have their trains running from the city of Troy might on equal terms and with equal privileges use the railroad track or
188 tracks thereby authorized to be constru-ed. And the act appointed commissioners to obtain subscription to the capital stock of the railroad corporation thereby authorized and to locate said railroad "subject to the approval of all the members elected to the Common Council of the city of Troy, and in case of the death or refusal of any of said commissioners to act the Common Council of said city shall fill such vacancy."

Second. Under and in pursuance of said act and of the act therein mentioned, a railroad corporation was duly organized with a capital of thirty thousand dollars under the name of the Troy Union Railroad Company; and said company constructed a railroad through certain portions of the city of Troy, and put it in operation in 1853 and 1854.

Third. That on or about the third day of December, 1852, an agreement, in writing, under the seals of the several parties, bearing date on that day, was entered into between the Mayor, Recorder, Aldermen and Commonalty of the city of Troy, party of the first part, the Troy Union Railroad Company, party of the second part, the Rensselaer and Saratoga Railroad Company, party of the third part the Schenectady and Troy Railroad Company party of the fourth part, the Hudson River Railroad Company, party of the fifth part, and the Troy and Boston Railroad Company, party of the sixth part, in and by which contract or agreement it was, among other things for a valuable consideration, provided and agreed as follows: viz.:

"17. The party of the first part agree that the Common Council of the city of Troy shall join in an application to the Legislature of the State of New York that the Troy Union Railroad Com-
189 pany be exempt from taxation upon an amount exceeding the present amount of its capital stock, and that no tax be imposed upon the Rensselaer and Saratoga Railroad Company on account of the proposed addition to the said bridge. And if such law be not passed the Common Council of the city of Troy shall refund to the Troy Union Railroad Company an amount equal to the city taxes imposed on the Troy Union Railroad Company for any valuation exceeding its present capital stock, and shall also refund to the Rensselaer and Saratoga Railroad Company an amount equal to the city taxes imposed on the Rensselaer and Saratoga Railroad Company, on account of the said bridge, for any valuation exceeding the present valuation."

Fourth. That in the year 1853, the Legislature of the State of New York enacted in and by Chapter 462 of the Session Laws of that year, as follows:

"Sec. 1. For the purposes of taxation in the city of Troy and in the county of Rensselaer, the property of the Troy Union Railroad Company, shall be estimated and assessed (As the Common Council of said city of Troy, by its contract with said company dated December third, eighteen hundred and fifty-two, agreed that the same

should be), at the amount of the capital stock of said company, and no more and (As agreed in the said contract) the bridge of the Rensselaer and Saratoga Railroad Company, over the Hudson River at Troy, shall for the purposes of taxation, not be estimated or assessed at any increased valuation by reason of the addition thereto agreed for in said contract."

"Sec. 2. This act shall take effect immediately."

Fifth. That on or about the first day of July, 1858, an
190 agreement, in writing, under the seals of the several parties was entered into, bearing date on that day, between the mayor, recorder, aldermen and commonalty of the city of Troy, party of the first part, The Troy Union Railroad Company, party of the second part, The Rensselaer and Saratoga Railroad Company, party of the third part, The New York Central Railroad Company, party of the fourth part, The Hudson River Railroad Company, party of the fifth part, and The Troy and Boston Railroad Company, party of the sixth part, in and by which last mentioned contract and agreement, it was among other things, for a valuable consideration, provided and agreed as follows: "XI. The party of the first part agree that if the law passed by the legislature of the State of New York, June 24, 1853, relative to the taxation of the property of The Union Railroad Company in Troy, shall at any time be repealed, the common council of the city of Troy shall join in an application to the legislature of the State of New York that The Troy Union Railroad Company be exempt from taxation upon an amount exceeding the present amount of the capital stock, and that no tax be imposed upon The Rensselaer and Saratoga Railroad Company, on account of the proposed addition to the said bridge; and if such law shall not be passed the common council of the city of Troy shall refund to The Troy Union Railroad Company an amount equal to the city taxes imposed on The Troy Union Railroad Company for any valuation exceeding its present capital stock, and shall also refund to The Rensselaer and Saratoga Railroad Company an amount equal to the city taxes imposed on The Rensselaer and Saratoga Railroad Company, on account of the said bridge, for any valuation exceeding the present valuation.

191 Sixth. That in 1852 the Greenbush Railroad, practically The Hudson River, The Troy and Schenectady, The Troy and Boston and Rensselaer and Saratoga Railroads had their termini in the city of Troy. The terminus of The Hudson River Railroad was on River street, at Adams, but passengers were discharged somewhere between the foot of State street and the Troy house, the steam cars of The Rensselaer and Saratoga Railroad Company stopped at Green Island, on the opposite side of the river and passenger cars were brought by horses across the bridge, down River street and stopped at the Troy house, and passengers going to New York would go down to The Hudson River terminus. The terminus of The Troy and Schenectady Railroad was on the Green Island side of the river opposite Troy and its passenger cars were drawn over by horses and came down River street to the then steamboat landing near the foot of State street, back of the Alhambra. The terminus of The

Troy and Boston Railroad was on River street in front of the Mansion house, the passenger cars were drawn down by horses from Hoosick street.

Seventh. That in and about the year 1852, there was no interchanging of cars between connecting roads, and all passengers had to change, and these passenger cars were drawn some distance along River street, which was the principal business street of the city of Troy in those days.

Eighth. That extended negotiations and consultations were had between the officials of the city of Troy and the officials of the railroad companies to devise some practicable way of getting through the city of Troy by steam. The city of Troy practically
192 owned The Troy and Schenectady Railroad to Schenectady, which was run at a loss, and the citizens were taxed every year for its support; and leading citizens, members of the common council and members of the railroad companies, had frequent meetings.

Ninth. That at the execution of the contract mentioned in the third finding, each of the parties had a duplicate of it, and the railroads, parties to that contract, each subscribed for an equal amount of the capital stock of The Troy Union Railroad Company, so as to fill up the capital of thirty thousand dollars.

Tenth. That it was provided in and by the contract mentioned in the third finding, as follows:

"4. The said party of the first part agree to issue their bonds at six per cent. interest, payable in not less than ten nor more than twenty years from the date thereof, to an amount sufficient to raise the money to pay the whole amount of the cost of the railroad which shall be constructed by The Troy Union Railroad Company, including the passenger house," and that the city issued its bonds thereunder to the amount of seven hundred and seven thousand dollars.

Eleventh. That it was agreed in said last mentioned contract as follows: "5. The Troy Union Railroad Company agree to execute to said party of the first part a mortgage upon their road, buildings, appurtenances, property rights and franchises, conditioned for the payment of the whole amount of the said bonds, with the interest thereon as the same shall respectively become due," and that the mortgage therein provided for was executed.

Twelfth. That it was covenanted in said last mentioned contract as follows: "6. The Rensselaer and Saratoga Railroad Com-
193 pany, The Schenectady and Troy Railroad Company, The Hudson River Railroad Company and The Troy and Boston Railroad Company, each covenant to execute to the said party of the first part a contract to indemnify the said party of the first part against the payment of one-fourth of said bonds and of the interest thereon, provided that the income of The Troy Union Railroad Company shall be insufficient to pay the same. But nothing in such contract contained shall bind either of said companies to the payment, in any event, of a greater sum than one hundred and twenty-five thousand dollars ($125,000) and interest thereon, including the stock subscribed by them, and that a contract in pursuance of that provision was executed by the different railroad companies.

Thirteenth. That all the bonds issued by the city of Troy afo said, for the purpose of the Troy Union Railroad Company have be paid by the railroad companies.

Fourteenth. That the entire cost of the Troy Union Railroad w something over eight hundred thousand dollars, it having been pa for, aside from stock, the bonds of the city, by stock, thirty thousa dollars and by assessments upon the railroad companies.

Fifteenth: That the Troy Union Railroad is located entir within the city of Troy; it is simply tracks, road and a passeng station that are used and operated by steam by each of the railroa running steam trains in the city. It carries no passengers and h no transportation business. It owns no cars nor locomotives. employs men principally to take care of the track, and flagmen crossings, and they are paid by the railroads using it in pr
194 portion to their ownership. The payments are ma monthly, and its accounts do not extend beyond the 15th the next month.

Sixteenth. That when the Troy Union Railroad Company w constructed cars were not propelled by steam across the Hudson riv into or from the city of Troy, and nowhere across the Hudson rive

Seventeenth. That the tracks of the Troy Union Railroad are la down partly in the streets of the city of Troy and partly on portio of lots purchased by the company, and its depot is located on a pa of west was originally Sixth street, the tracks being laid down pre near where Sixth street was. Land was also taken for it on ea side of Sixth street.

Eighteenth. That the Troy and Schenectady Railroad was lea to the New York Central Railroad Company, and merged in its ra road about 1854, and subsequently the New York Central Railro Company was consolidated with the Hudson River Railroad Co pany about 1870.

Nineteenth. That the Troy Union Railroad Company and i property, from its organization up to 1888 was assessed for thir thousand dollars, and no more.

Twentieth. That in the year 1886, at the time they were hearin persons who considered themselves aggrieved, and to review their a sessments, the Troy Union Railroad Company appeared before t general assessors of the city of Troy and duly objected to the asse ment then appearing upon the assessors' books, submitting to the a verified statement of the facts, and offering to furnish any furth evidence the assessors might desire.

Twenty-first. That on the assessment roll in the year 1886, the a sessment of the property of the Troy Union Railroad Co
195 pany was originally in the words and figures following, th is to say:

On book containing proposed assessment of persons and proper in the third ward.

Names of persons—Troy Union Railroad Company, president an directors of.

Description of property in the third ward—real: Incorporated Companies.

Lands of roadbed and adjacent thereto, in the second and third wards, as shown by city engineer's maps, with superstructure, depot, building and appurtenances, $600,000.00.

On book containing proposed assessment of persons and property in the fourth ward:

Names of persons—Troy Union Railroad Company, president and directors thereof.

Description of property in the fourth ward—real: Incorporated Companies.

Lands of roadbed and adjacent thereto, in the fourth, seventh and tenth wards, as shown by city engineer's map, with superstructure, masonry, bridges and appurtenances, $200,000.00.

On book containing proposed assessment of persons and property in the eleventh ward.

Names of persons—Troy Union Railroad Company, president and directors of.

Description of property in the eleventh ward—real: Incorporated Companies.

Lands of roadbed and adjacent thereto, in the first, sixth, eighth, ninth, eleventh and twelfth wards, as shown by city engineer's map, with superstructure, masonry, bridges and appurtenances, $200,000.00.

195 Twenty-second. That in the year 1886, such assessment was revised and reduced by the general assessors so as to stand in the completed assessment rolls as follows:

On the book containing assessment of persons and property in the third ward:

Names of persons—Troy Union Railroad Company, president and directors of.

Description of property in the third ward—real: Incorporated Companies.

Lands of roadbed and adjacent thereto, in the second and third wards, as shown by city engineer's map, with superstructure, depot, buildings and appurtenances, $500,000.00.

On the book containing assessments of persons and property in the fourth ward:

Names of persons—Troy Union Railroad Company, president and directors of.

Description of property in the fourth ward—real: Incorporated Companies.

Lands of roadbed and adjacent thereto, in the fourth, seventh and tenth wards, as shown by city engineer's map, with superstructure, masonry, bridges and appurtenances, $133,984.00.

On the book containing assessments of persons and property in the eleventh ward:

Names of persons—Troy Union Railroad Company, president a
directors of.

Description of property in the eleventh ward—real: Incorporat
Companies.

Lands of roadbed and adjacent thereto in the first, sixth, eigh
ninth, eleventh and twelfth wards, as shown by city engineer's m
with superstructures, masonry, bridges and appurtenances, $15
000.00.

197 Twenty-third. That for the year 1886, the first four d
fendants were the general assessors of the city of Troy, a
the defendant, Spicer, was the comptroller of the city of Troy.

And said court finds and decides as conclusions of law:

First. That the said assessment of $783,984 in the year 1886,
the property of the relator was illegal and erroneous by reason
over-valuation, the valuation having been fixed and established
law for the purposes of taxation at not to exceed thirty thous
dollars.

Second. That the relator have judgment, that the general asses
of the city of Troy make a reassessment or corrected assessment a
upon the said relator and its property for the amount in the agg
gate of thirty thousand dollars.

Third. Costs are not allowed to either party.

Dated, Nov. 13th, 1888.

SAMUEL EDWARDS,
Justice Supreme Court.

198 *Judgment.*

Supreme Court.

THE PEOPLE ex Rel. THE TROY UNION R. R. Co.

against

EDWARD CARTER, JAMES MALONEY, CHRISTIAN W. RAPP,
Michael A. Tierney, General Assessors of the City of Troy,
John D. Spicer, Comptroller of the City of Troy.

This proceeding having been brought on to trial and hearing,
the court having made and filed its decision, now, on motion of J
H. Peck, attorney for the relator, it is ordered, adjudged and dec
thereon as found and described by trial justice in his decision
findings, and that the assessment of $783,984 in the year 1886
the property of the relator, the Troy Union Railroad Company
the city of Troy, and particularly mentioned in said decision
finding was illegal and erroneous by reason of over-valuation,
valuation having been fixed and established by law for the purp
of taxation at not to exceed thirty thousand dollars, and that the
eral assessors of the city of Troy make a reassessment or corre

assessment on and upon the Troy Union Railroad Company and its property for the amount in the aggregate of thirty thousand dollars.

Dated, January 17, 1889.

D. E. CONWAY, *Clerk.*

199 *Notice of Appeal.*

Supreme Court.

THE PEOPLE ex Rel. THE TROY UNION RAILROAD COMPANY

against

EDWARD CARTER, JAMES MALONEY, CHRISTIAN W. RAPP, and Michael A. Tierney, General Assessors of the City of Troy, and John D. Spicer, Comptroller of the City of Troy.

GENTLEMEN: Take notice, that the above-named defendants appeal, and each of them appeals to the General Term of the Supreme Court from the judgment of the Special Term of this Court herein entered in the clerk's office of the county of Rensselaer, on the 17th day of January, 1889, reducing the assessment of relator's said property to $30,000, or not to exceed that sum, and from every part thereof.

Dated, February 2d, 1889.

Yours, etc.,

R. A. PARMENTER,
Attorney for Defendants,
No. 15 City Hall, Troy, N. Y.

To the clerk of the county of Rensselaer, and to John H. Peck, Esq., attorney for the relator.

200 STATE OF NEW YORK,
City of Troy, County of Rensselaer:

Clerk's Office.

I hereby certify that I have compared the annexed copy papers with the original thereof filed in this office on the — day of ——, and that the same is a correct transcript therefrom and of the whole of said original.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this 26th day of March, 1889.

D. E. CONWAY, *Clerk.*

201 *Order of General Term.*

At a General Term of the Supreme Court of the State of New Yor
Held in and for the Third Judicial Department of said State,
the City Hall, in the City of Albany, on the 27th Day of Ma
A. D. 1889.

Present: Hon. William L. Learned, Presiding Justice; Hon. J.
Landon, Hon. Charles R. Ingalls, Associate Justices.

THE PEOPLE ex Rel. THE TROY UNION RAILROAD COMPANY,
Respondent,

against

EDWARD CARTER, JAMES MALONEY, CHRISTIAN W. RAPP, an
Michael A. Tierney, General Assessors of the City of Troy, an
John D. Spicer, Comptroller of the City of Troy, Appellants.

The appeal of the defendants, from the judgment of the Spec
Term of this court, herein entered in the Clerk's Office of the coun
of Rensselaer, on the 17th day of January, 1889, reducing the asse
ment of relator's property to $30,000, or not to exceed that sum, an
from every part thereof, having duly come on to be hear
202 and after hearing Mr. R. A. Parmenter, of counsel for sa
defendants and appellants, and Mr. Esek Cowen, of couns
for said relator and respondent, and due deliberation having be
had thereon, now, on motion of John H. Peck, attorney for sa
relator and respondent, it is

Ordered, that the said judgment appealed from, be and the sam
hereby is in all things affirmed, with fifty dollars costs and disbur
ments of said appeal.

Enter in Rensselear county. ROBERT H. MOORE, *Clerk.*

(Copy.)
ROBERT H. MOORE, *Clerk.*

203 *Judgment of Affirmance.*

Supreme Court.

THE PEOPLE ex Rel. THE TROY UNION RAILROAD COMPANY, Relat
and Respondent,

against

EDWARD CARTER, JAMES MALONEY, CHRISTIAN W. RAPP, a
Michael A. Tierney, General Assessors of the City of Troy, a
John D. Spicer, Comptroller of the City of Troy, Defendants a
Appellants.

Judgment, July 11th, 1889.

The appeal to the General Term of this court, of each of the abo
named defendants, from the judgment of the Special Term, ente

in the clerk's office of the County of Rensselaer, on the 17th day of January, 1889, reducing the assessment of the relator's property to thirty thousand dollars, or not to exceed that sum, and from every part thereof, having come on to be heard, and the said appeal having been argued, and the said judgment having been in all things affirmed, with fifty dollars costs and disbursements of said appeal, now, on motion of John H. Peck, attorney for the relators, it is

Ordered and adjudged, that the said judgment, so as afore-
204 said appealed from, be and the same is in all things affirmed, and that the said relator, the respondent on said appeal, recover of the defendants and appellants the sum of fifty dollars costs and disbursements of said appeal.

(Signed) D. E. CONWAY, *Clerk*.

Appeal to Court of Appeals.

Supreme Court.

THE PEOPLE ex Rel. THE TROY UNION RAILROAD COMPANY, Respondent,

against

EDWARD CARTER and Others, Assessors of the City of Troy, and John D. Spicer, Comptroller of the City of Troy, Appellants.

GENTLEMEN: Take notice, that the above-named appellants appeal to the Court of Appeals, from the judgment or order of the General Term of the Supreme Court affirming the order or determination of the Special Term, herein entered in the clerk's office of the county of Rensselaer, on the 11th day of July, 1889, with fifty dollars costs of affirmance against the said appellants. The appellants intend

to bring up for review upon such appeal, all exceptions taken
205 before the trial court, and all exceptions taken to the several findings of the Trial Court, and all exceptions taken to refusals by Trial Court to find as requested by the said defendants and appellants.

Dated, July 20, 1889.

Yours, etc.,

R. A. PARMENTER,
Attorney for the Defendants.

Office and Post Office Address: 15 City Hall, Troy, N. Y.

To the Clerk of the County of Rensselaer, and to John H. Peck, Esq., Attorney for the Relator and Respondent.

STATE OF NEW YORK,
City of Troy, County of Rensselaer:

Clerk's Office.

I hereby certify, that I have compared the annexed copy, notice of appeal, order appealed from and the papers on which the General

Term acted in making such order with the original thereof filed in this office, and that the same is a correct transcript therefrom and of the whole of said originals.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this 31st day of July, 1889.

D. E. CONWAY, *Clerk.*

206 *Opinion of General Term.*

Albany, May, 1889.

THE PEOPLE ex Rel. THE TROY UNION RAILROAD COMPANY

against

EDWARD CARTER et al., Assessors.

SAME

VS.

SAME.

R. A. Parmenter, for Appellants.
Esek Cowen, for Respondent.

LEARNED, *P. J.:*

We think that under chapter 269, Laws of 1880, the writ was properly issued, and that it should not have been quashed either as against the assessors or as against the comptroller. It issued against the assessors because it was to review their action, against the comptroller because the roll was in his possession. The case of People ex rel. Bay State vs. McLean et al., 80 N. Y. 254, cited by the defendants was decided in February, 1880, and did not arise under this act. So of many other cases cited by defendants. The case of the People vs. Tompkins, 40 Hun. 229, could not have been a case under this act, as will appear on noticing the time when the certiorari issued.

Nor is the return to a certiorari under this act conclusive.

207 The object of the act is to have a review and that too on further evidence if necessary. These objections of the defendant have been settled against them in many cases.

We think that there is nothing in the change made by chapter 201, Laws of 1885, of the form of oath to be attached to the assessment roll which affects the question in this case. The assessors have always been required to assess property at its value. And that change in form of the oath did not change their obligation in this respect. Nor can that act be understood to affect a change in or to repeal the law upon which the relator relies, viz.: Chapter 462 Laws of 1853.

The only question here is as to the validity of that law and of the alleged contracts to carry out which it was passed.

It is not contended by the relator on this argument that that part of the act which affects the Rensselaer and Saratoga bridge is valid, because the relator admits that that subject is not expressed in the title.

"If a local act contains a subject which is properly expressed in the title it is valid as to that subject though not valid as to a subject not expressed." In re Van-Antwerp, 56 N. Y., at page 267. People ex rel. vs. Briggs, 50 N. Y. 553.

As to the taxation of this Troy Union Railroad Company, that subject is expressed in the title of the act in question, sufficiently so that the act is not unconstitutional in that view.

It appears that this act was passed as the result of an agreement between the city of Troy and these railroads who were to form this new company for the purpose of constructing a Union depot.

208 Whether it is wise for the legislature to pass acts exempting certain property from taxation is not for us to say. This has often been done in respect to benevolent institutions and in respect to the property of clergymen. If property of benevolent institutions may be excepted, so may the property of other institutions of a different character.

While this act has been the form of fixing the amount at which the company is to be assessed, it is practically an act that all property of the company beyond that amount shall be exempt. This may be unjust to other persons, natural and artificial in the state, but the injustice, if any, is one that we cannot redress. The power is in the legislature. Humphrey vs. Pegnes, 83 U. S. 244.

The order should be affirmed with $50 costs and disbursements against the appellants.

Mr. Carr: That takes in all the testimony, all the proceedings, the judgment that was rendered, the appeal to the General Term, the opinion of the General Term and the judgment upon the decision of the Court of Appeals. It includes the whole.

Mr. Carr: That takes in all the testimony, all the proceedings, the judgment that was rendered, the appeal to the General Term, the opinion of the General Term and the judgment upon the decision of the Court of Appeals. It includes the whole.

Mr. Carr: This case was reported in 52 Hun 458, and was affirmed in 117 N. Y. 625, without opinion.

Now I offer in evidence chapter 109 of the Laws of 1859, an act to authorize The Troy & Boston Railroad Company to erect a freight depot and construct a track, in the city of Troy.

209 Same received and following is a copy:

"An Act to Authorize the Troy and Boston Railroad Company to Erect a Freight Depot and Construct a Track in the City of Troy," Passed April 4, 1859.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The Troy and Boston Railroad Company is hereby authorized and empowered to extend and construct their railroad track upon the lands of The Troy Union Railroad Company, as may

be agreed with such company, and also to extend or construct their said track from the railroad of the said Troy Union Railroad Company to such point in said city as said Troy and Boston Railroad Company may select for a freight depot; and for the purposes of so constructing such railroad track and locating and constructing such depot, said company may proceed to purchase or procure lands, and the right of way, under and in accordance with the provisions of their charter and organization and the general railroad acts, without any increase of their capital stock; provided, always, that this act shall not authorize said company to construct such railroad track on Adams street, east of First street, nor upon any street or alley east of First street, between Adams and Federal streets, nor across River street between Grand Division and Jacob streets, or upon First street, except to cross the same; nor without the consent of the common council of the city of Troy, upon Front street, north of Division street; neither shall anything herein be construed to allow the taking of grounds of the eighth ward school.

Sec. 2. In the use of said track by the cars of the company the streets over which it passes shall not be obstructed by unnecessary delays; and no cars shall be stationary for more than ten minutes at any one time, upon any street or alley east of River street.

Sec. 3. This act shall take effect immediately."

Mr. Carr: I offer in evidence chapter 59 of the Laws of 1862, an act to authorize the city of Troy to borrow money to pay such amount of the bonds of said city issued to The Troy Union Railroad Company, due January 1st, 1863, as shall not be covered by money on hand for that purpose.

Same received and the following is a copy:

"An Act to Authorize the City of Troy to Borrow Money to Pay Such Amount of the Bonds of said City Issued to the Troy Union Railroad Company Due First of January, Eighteen Hundred and Sixty-three, as Shall Not be Covered by Money on Hand for That Purpose, Passed March 27, 1862, Three-fifths Being Present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The mayor, recorder, alderman and commonalty of the city of Troy are hereby authorized to borrow, upon bonds to be issued under the common seal of said city, and the signature of the mayor thereof, such sum of money, as with the money then on hand applicable to that purpose, shall be sufficient to pay the bonds of said city, issued to the Troy Union Railroad Company payable on the first day of January, eighteen hundred and sixty-three, amounting to one hundred thousand dollars. Such bonds shall be made payable at such times as the common council of said city shall designate for that purpose, and shall bear interest at, not exceeding, seven per cent. per annum, payable semi-annually, but shall not be

211 disposed of at less than their par value; and the amount so borrowed shall be applied to the purpose specified in this section and not otherwise.

Sec. 2. The interest on the bonds authorized by the first section of this act, shall be paid in the manner provided by section one of 'An Act to authorize the city of Troy to raise money by tax, and to borrow money,' passed April thirteenth, eighteen hundred and fifty-nine.

Sec. 3. The principal of such bonds shall be paid out of moneys to be received by said city of Troy from the Troy Union Railroad Company, or the several railroad corporations composing the same, on account of principal under the compromise made in eighteen hundred and fifty-eight, and such moneys shall be applied to the payment of the bonds to be issued under the first section of this act, and the bonds issued by said city to the said Troy Union Railroad Company, and to no other purpose."

Mr. Carr: I offer in evidence a satisfaction of a mortgage given by the Troy Union Railroad Company to the city of Troy in 1852. That is recorded in the Rensselaer County Clerk's office July 26, 1901, at the foot of the mortgage given by the Troy Union Railroad Company to the city of Troy.

Mr. Carr: I offer in evidence an abstract of conveyances of property to the Troy Union Railroad Company which may be used by either party without reproduction in the record.

I also offer in evidence an abstract of lands conveyed by the Troy Union Railroad Company to sundry persons as follows:

"Lands conveyed by the Troy Union Railroad Company to sundry persons are as follows:

212 Troy Union Railroad

to

Sydney D. Lamport.

Consideration $2000. Deed dated April 18, 1853, recorded May 2, 1853, in book 87, page 66, conveys the west part of lot 252 on the east of the alley between North Second and North Third Sts., and between Jacob and Federal Sts.

Troy Union Railroad

to

Nathaniel Bosworth.

Con. $2000. Deed dated 30th day of April, 1853, recorded June 9, 1853, book 87, page 156, conveys a part of lot 239 on the east side of North Second St.

Troy Union Railroad

to

Mayor, etc., of Troy.

Con. $5. Deed dated May 12, 1853, recorded June 14, 1853, book 87, page 170, conveys a parcel of land in Troy between Albany and Fulton Sts. and between Fifth and Sixth Sts.

Troy Union Railroad

to

Amos Robinson.

Con. $100. Deed dated July 12, 1863, recorded July 18, 185[illegible] book 87, page 228, conveys lot on the alley between Fourth and Hill Sts. and between north line of Adams St.

Troy Union Railroad

to

Robert Davis.

Con. $1150. Deed dated July 9, 1853, recorded July 2[illegible]
213 1853, book 87, page 244, conveys part of lot 342 east side of North Fourth St. between Jacob and Hutton Sts.

Troy Union Railroad

to

James Hodge.

Con. $630. Deed dated Aug. 29, 1853, recorded Sept. 19, 185[illegible] book 87, page 341, conveys a parcel of land in Troy between Grand Division and Federal Sts. and between North Third and North Fourth Sts.

Troy Union Railroad

to

John Whelan.

Con. $600. Deed dated Aug. 5, 1853, recorded Sept. 19, 185[illegible] book 87, page 342, conveys a parcel of land in Troy between Washington and Adams Sts. and between Fourth and Hill Sts.

Troy Union Railroad

to

James Higgins.

Con. $1000. Deed dated May 28, 1853, recorded Sept. 20, 1853, book 87, page 354, parcels of land in Troy are conveyed between Federal and Jacob Sts. and between North Second and North Third Sts.

Troy Union Railroad

to

Nathan Brownson.

Con. $1150. Deed dated Sept. 4, 1853, recorded Sept. 21, 1853, book 87, page 357, conveys a parcel of land in Troy the undivided half of a certain parcel between North Third and North Fourth Sts. and between Jacob and Federal Sts.

214 Troy Union Railroad

to

John Colby and John P. Colby.

Con. $1150. Conveys a parcel of land in the city of Troy between North Third and North Fourth Sts. and between Jacob and Federal Sts.

Troy Union Railroad

to

Jared S. Weed.

Con. $2500. Deed dated Aug. 25, 1853, recorded Nov. 17, 1853, book 87, page 475, conveys a parcel of land in Troy, east side of River St. and North of Federal St.

Troy Union Railroad

to

Matalulem B. Cager.

Con. $2000. Deed dated April 27, 1853, recorded Nov. 19, 1853, book 89, page 2, conveys a parcel of land in Troy between Federal and Jacobs Sts. and between North Second and Third Sts.

Troy Union Railroad

to

Bernard Montague.

Con. blank dollars. Deed dated Feb. 16, 1854, recorded Mar 15, 1854, book 89, page 264, conveys a parcel of land in Troy in t third ward east side of Sixth St.

Troy Union Railroad

to

Abel Bummel.

Con. $200. Deed dated Feb. 6, 1854, recorded March 22, 18 book 89, page 276, conveys a parcel of land in Troy in the four ward and part of lot 198 north side of Federal St.

215 Troy Union Railroad

to

John Strain.

Con. $850. Deed dated Feb. 6, 1854, recorded March 22, 18 book 89, page 277, conveys a parcel of land in Troy between Fede and Jacobs Sts. and between North Third and North Fourth Sts.

Troy Union Railroad

to

George Warren.

Con. $700. Deed dated Feb. 3, 1854, recorded April 3, 18 book 89, page 333, conveys a parcel of land in Troy on the nort east corner of Hutton and North Fourth Sts.

Troy Union Railroad

to

Octavo Wilmett.

Con. $350. Deed dated May 11, 1853, recorded Nov. 9, 18 book 90, page 87, conveys a parcel of land in Troy between Jac and Hutton Sts. and between North Third and North Fourth S

Troy Union Railroad

to

David Duncan.

Con. $350. Deed dated Nov. 14, 1853, recorded April 28, 1854, book 91, page 71, conveys a parcel of land in Troy between Hutton and Jacob Sts. and between North Third and North Fourth Sts.

Troy Union Railroad

to

Aphraim Wood.

Con. $1400. Deed dated April 18, 1853, recorded June
216 14, 1854, book 91, page 176, conveys a parcel of land in Troy between Federal and Jacob Sts. and between River St. and North Second St.

Troy Union Railroad

to

Ansom Atwood.

Con. $1. Deed dated Aug. 14, 1854, recorded Aug. 22, 1854, book 91, page 285, conveys a parcel of land in Troy between First St. and Second St. and between Jefferson and Ida Sts. and other lands.

Troy Union Railroad

to

Michael O'Heran.

Con. $3500. Deed dated June 1, 1854, recorded Aug. 29, 1854, book 91, page 292, conveys a parcel of land in Troy a part of lot 892, and 862 and north of Fulton and Sixth Sts.

Troy Union Railroad

to

Patrick O'Brien.

Con. $600. Deed dated July 8, 1854, recorded Sept. 18, 1854, book 91, page 329, conveys a parcel of land in Troy between Washington and Adams Sts and between Hill and Fourth Sts.

Troy Union Railroad

to

George Holeur.

Con. $100. Deed dated Sept. 22, 1954, recorded Oct. 4, 185
book 91, page 353, conveys a parcel of land in Troy in part of lo
145, 146 and 147 on the south side of Trenton St.

217 Troy Union Railroad

to

Francis Miller.

Con. $5. Deed dated April 3, 1854, recorded April 11, 185
book 92, page 315, conveys a parcel of land in Troy between Adam
and Jefferson Sts. and between Second and Third Sts. and the easte
part of lot 69 on the west side of Third St. 71 and 7 and other land

Troy Union Railroad

to

Wm. T. Haight.

Con. $300. Deed dated April 21, 1853, recorded April 21, 185
book 92, page 373, conveys a parcel of land in Troy between Feder
and Grand Division Sts. and between North Second and Nor
Third Sts.

Troy Union Railroad

to

John S. Perry and Burrows Cule.

Con. $2200. Deed dated Sept. 19, 1854, recorded Oct. 30, 185
book 95, page 13, conveys a parcel of land in Troy on the north si
of Fulton St.

Troy Union Railroad

to

D. Thomas Vail.

Con. $1. Conveys a parcel of land in Troy between Albany S
and State St. and between Fifth and Sixth Sts.

Troy Union Railroad

to

Elias Allen.

Con. $2000. Deed dated June 9, 1853, recorded Sept. 9,
218 1854, book 95, page 83, conveys a parcel of land in Troy between Jacob and Hutton Sts. and between North Third and North Fourth Sts.

Troy Union Railroad

to

Joseph Stone.

Con. $300. Deed dated Sept. 27, 1853, recorded Dec. 9, 1854, book 95, page 90, conveys a parcel of land in Troy between Third and Fourth Sts. and between Adams and Jefferson Sts.

Troy Union Railroad

to

Francis A. Mann.

Con. $250. Deed dated Sept. 22, 1854, recorded Dec. 27, 1854, book 95, page 107, conveys a parcel of land in Troy between Fifth and Hill Sts. and between Washington and Liberty Sts.

Troy Union Railroad

to

Peter Havermans.

Con. $530. Deed made Dec. 1, 1854, recorded Dec. 27, 1854, book 95, page 109, conveys a parcel of land in Troy between Liberty and Washington Sts. and east of Fifth St.

Troy Union Railroad

to

John C. Heart.

Con. $200. Deed dated Aug. 14, 1854, recorded Dec. 28, 1854, book 95, page 112, conveys a parcel of land in Troy between Liberty and Washington Sts. and between Fifth and Sixth Sts.

219 Troy Union Railroad

to

Kyran Cleary.

Con. $725. Deed dated Nov. 23, 1854, recorded Dec. 28, 185[illegible] book 95, page 114, conveys a parcel of land in Troy between Can[illegible] Ave. and Madison St.

Troy Union Railroad

to

Horace T. Caswell.

Con. $100. Deed dated Dec. 13, 1854, recorded Jan. 9, 1855, boo[illegible] 95, page 139, conveys a parcel of land in Troy between Fourth and Eighth Sts. and between Jacob and Hutton Sts.

Troy Union Railroad

to

Edward D. Beach.

Con. $1180. Deed dated Sept. 19, 1854, recorded Jan. 16, 185[illegible] book 95, page 156, conveys a parcel of land in Troy on the north side of Fulton St.

Troy Union Railroad

to

Francis A. Mann.

Con. $9320. Deed dated Dec. 1, 1854, recorded Jan. 16, 185[illegible] book 95, page 158, conveys a parcel of land in Troy between Liberty and Washington Sts. and east of Fifth St.

Troy Union Railroad

to

Filanda Wells.

Con. $1725. Deed dated Oct. 1, 1853, recorded March 15, 185[illegible] book 95, page 260, conveys a parcel of land in Troy between Congress and Ferry Sts. and between Sixth and Seventh Sts.

220 Troy Union Railroad

to

Jared S. Weed.

Con. $1955. Deed dated Dec. 1, 1854, recorded March 21, 1855, book 95, page 282, conveys a parcel of land in Troy between Adams and Washington Sts. and between Third and Fourth Sts. and other parcels.

Troy Union Railroad

to

Patrick Walsh.

Con. $245. Deed dated Dec. 1, 1854, recorded March 23, 1855, book 95, page 293, conveys a parcel of land in Troy between Liberty and Washington Sts. and east side of Fifth St.

Troy Union Railroad

to

Charles I. Mann.

Con. $5. Deed dated April 10, 1854, recorded March 27, 1855, book 95, page 297, conveys a parcel of land in Troy between Madison and Canal Aves. and between First and River Sts.

Troy Union Railroad

to

John W. Bates.

Con. $500. Deed dated Nov. 15, 1853, recorded April 2, 1855, book 95, page 307, conveys a parcel of land in Troy between Hoosick and Hutton Sts.

Troy Union Railroad

to

Jared S. Weed.

221 Con. $200. Deed dated May 1, 1855, recorded June 1, 1855, book 95, page 452, conveys a parcel of land in Troy between Crooked alley and North Second Sts. and between Federal and Jacob Sts.

Troy Union Railroad

to

Roger A. Flood.

Con. $1150. Deed dated Sept. 7, 1854, recorded June 2, 185 book 95, page 454, conveys a parcel of land in Troy between Secon and Third Sts. and between Jefferson and Adams Sts.

Troy Union Railroad

to

John L. Thompson.

Con. $400. Deed dated June 1, 1855, recorded June 12, 185 book 95, page 470, conveys a parcel of land in Troy between Liber and Washington Sts. and east of Fifth St.

Troy Union Railroad

to

John L. Thompson.

Con. $325. Deed dated June 1, 1855, recorded June 12, 185 book 95, page 471, conveys a parcel of land in Troy between Fir and Second Sts. and between Ida and Jefferson Sts.

Troy Union Railroad

to

John L. Thompson.

Con. $75. Deed dated June 1, 1855, recorded June 12, 1855, boo 95, page 472, conveys a parcel of land in Troy between Jefferso and Ida Sts. and between River and First Sts.

222 Troy Union Railroad

to

John L. Thompson.

Con. $400. Deed dated June 1, 1855, recorded June 12, 185 book 95, page 473, conveys a parcel of land in Troy between Third and Fourth Sts. and between Ida and Jefferson Sts.

Troy Union Railroad

to

Arba Read and Thomas T. Read.

Con. $1. Deed dated Nov. 7, 1854, recorded June 21, 1855, book 95, page 491, conveys a parcel of land in Troy between Ferry and Pine Sts. and east of Fifth St.

Troy Union Railroad

to

Stephen C. Clemens.

Con. $180. Deed dated Sept. 27, 1854, recorded Dec. 17, 1855, book 97, page 142, conveys a parcel of land in Troy between Canal Ave. and Madison St. and between First St. and the alley west of First St.

Troy Union Railroad

to

Patrick Monohan.

Con. $140. Deed dated Dec. 1, 1854, recorded March 26, 1857, book 101, page 400, conveys a parcel of land in Troy between Liberty and Washington Sts. and east of Fifth St.

223 Troy Union Railroad in the City of Troy, Rensselaer and Saratoga Railroad Co., and the Hudson River Railroad Co.

Agreement dated July 1, 1858, recorded Dec. 2, 1858, book 108, page 279, agreement between railroads.

Troy Union Railroad

to

George Tibbitts.

Con. $1000. Deed dated July 1, 1857, recorded Dec. 7, 1859, book 109, page 417, conveys a parcel of land in Troy, east side of River St. and north of Federal St.

Troy & Lansingburg R. R., Troy Union Railroad, Rensselaer & Saratoga R. R., N. Y. C. Railroad, Hudson River R. R., Troy & Boston R. R.

Con. —. Agreement dated Feb. 22, 1861, recorded Sept 9, 1861, book 113, page 330, agreement in reference to location of railroad, etc., etc.

Troy Union Railroad

to

John Hogan.

Con. $25. Deed dated Oct. 1, 1861, recorded April 12, 1862, bo
111, page 148, conveys a parcel of land in Troy near Washington

Troy Union Railroad

to

Henry A. Clum.

224 Con. $5. Deed dated July 1, 1863, recorded July 9, 18
book 121, page 96, conveys a parcel of land in Troy betwe
Liberty and Washington Sts. and east of Fifth St.

Troy Union Railroad

to

James Farrell.

Con. $100. Deed dated June 18, 1853, recorded Oct. 24, 18
book 203, page 392, conveys a parcel of land in Troy between Fe
and Liberty Sts. and east of Fifth St.

Troy Union Railroad

to

James Farrell.

Con. $1. Deed dated Dec. 9, 1853, recorded Oct. 24, 1883, bo
203, page 394, conveys a parcel of land in Troy between Ferry
Liberty Sts. and east of Fifth St.

[L. S.] RENSSELAER COUNTY, *ss:*

Clerk's Office, Dec. —, 1907

I, Jacob V. Jacobs, do hereby certify that the foregoing parcels
land were conveyed by Troy Union R. R. Co. to sundry persons w
the purchase price as mentioned in said conveyances.

J. V. JACOBS, *Clerk.*

Mr. Carr: I offer in evidence fifteen deeds from the New York a
Troy Railroad Company to the Troy Union Railroad Company t
were referred to and a description of the property contained in d
book No. 1 of the Troy Union Railroad Company. They run fr
page 1 up to page 42 as I remember it. I haven't the book here

I will bring it later. Received in evidence and may be referred to by either party without reproduction in the case.

225 Now I offer in evidence from the minute book of the Troy Union Railroad Company, No. 1, the minutes of the first meeting, covering the first date and down to 1855. What I offer in evidence from that book is a resolution adopted at a meeting of the board of directors of the Troy Union Railroad Company, June 26, 1852, adopting the by-laws of the company, and that resolution reads: "The committee appointed at a former meeting to draft by-laws reported that by laws as reported, after filling the blanks, were unanimously adopted."

And in that connection I offer in evidence the by-laws which appear on pages 15, 16, 17 and 18 of that minute book, as follows:

"By-Laws of The Troy Union Railroad Co.

(Adopted June 26, 1852.)

The Seal of the company shall be a Locomotive Seal, surrounded by the words 'Troy Union Railroad Co., incorporated 1851,'—and shall be kept by the treasurer.

Annual Election.

The annual election for Directors shall be held on the first Monday in November in each and every year at such place in the city of Troy as the Directors may designate.

The Polls shall be opened at 12 M. and continue open for one hour.

226 Inspectors.

These elections shall be held under the supervision of three inspectors or a majority of them, to be chosen by the Board of Directors annually.

Notice.

Notice of election shall be published in a Troy newspaper for 10 days prior to the day of election.

In case of an equal number of votes for any two or more Directors the Directors elected shall by ballot determine who shall be entitled to be said Directors.

The inspectors of election shall immediately after the election notify each Director of his election and call a meeting of all the Directors for organization. This meeting shall be on the Wednesday succeeding the election at 3.30 o'clock P. M.

Any vacancy occurring during the year in the Board of Directors may be filled at any meeting of the Board.

Stated Meetings.

In addition to this annual meeting, there shall be stated meetings of the Board at such times as the Board may designate from time to time.

Quorum.

The presence of a majority of the Directors at the time and place of meeting shall be necessary to constitute a quorum for the transaction of business, but a less number may adjourn from time to time until a majority shall be present.

227 Officers.

The Board of Directors at their annual meeting shall elect from their number, by ballot, a President and Vice-President (amended Jan. 3, 1880), and appoint the several standing committees to be named hereafter, who shall hold office for one year unless sooner removed by a majority of all the Directors.

A suitable person to perform the duties of secretary and treasurer shall also be appointed and shall hold office until removed.

President.

The President shall have authority to call special meetings of the Board and he shall call special meetings when desired to do so by two Directors. He shall preside at all meetings and be ex-officio chairman of the executive committee and he shall possess the powers which are usually exercised by presiding officers of incorporated companies. But he shall report his official acts at the first meeting of the Board.

Vice-President.

The Vice-President shall in the absence of the President or in case of vacancy or inability to act, be clothed with the powers of President and discharge his duties. He shall be ex-officio chairman of the Finance Committee.

Standing Committees.

There shall be two standing committees, viz.: Executive Committee, composed of the President ex-officio and two other Directors. Finance Committee, composed of the Vice-President ex-officio and two other Directors.

228 Executive Committee.

It shall be the duty of the Executive Committee to exercise a general supervision over the company's concerns, and they or a majority of them shall have authority to act in cases of emergency

during the recesses of the Board, always, however, reporting their acts to the Board.

Finance Committee.

The Finance Committee are to have a general supervision of the finances of the company, to see that the books and accounts of the company are kept in a systematic manner, to examine the vouchers and accounts of the Treasurer and certify to their correctness.

Secretary.

It shall be the duty of the Secretary to keep regular minutes of the proceedings of the Board of Directors. He shall cause to be published the notice for the annual election of Directors and give notice to all the Directors of the times and places of the meetings of the Board.

Treasurer.

It shall be the duty of the Treasurer to receive for safe keeping all the company's funds and to disburse the same on proper vouchers. He shall have charge of the necessary books and papers and under the Finance Committee devise a plan for the keeping of the company's accounts.

Contracts.

No contract shall be made on behalf of this company by any officer or agent except by authority of the Board of Directors.

229 Order of Business.

At stated meetings of the Board the following order of business shall be observed:

1. Reading minutes.
2. Presentation of petitions.
3. Reports of committees and officers of the Board.
4. Miscellaneous business.

Order of Business.

At special meetings, the business for which the meeting was called shall be first disposed of before any other business is in order.

Reports.

All reports of committees shall be made to the Board in writing.

Ayes and Noes.

On the demand of a Director, if seconded, the Ayes and Noes shall be taken on any question or motion presented for the decision of the Board and shall be recorded on the minutes.

A vote of two-thirds of all the Directors shall be necessary to alter, modify or repeal any section, part or portion of these By-Laws."

Mr. Carr: I offer in evidence from the same book what appears on pages 28 and 29, relating to the annual election of the directors of the company, the 1st day of November, 1852, and on pages 31 and 32, containing the election of the officers of the company following the election of the directors of that year.

Following is a copy of the same:

230 First Annual Election of Directors.

"Troy, Nov. 1, 1852.

At a meeting of the Stockholders of the Troy Union Railroad Company held this First day of November, 1852, at the Chamberlain's office in the City of Troy at 12 o'clock m. pursuant to public notice agreeably to Law for the purpose of electing thirteen Directors of said company for the ensuing year. Lyman Bennett and John P. Nazro, two of the inspectors who had been previously appointed by the Board of Directors of said company inspectors of said election severally appeared and took the following oath:

'I do solemnly swear that I will execute the duties of an inspector of the election now to be held with strict impartiality and according to the best of my ability.'

LYMAN BENNETT,
J. P. NAZRO,
Inspectors.

Sworn before me, this 1st day of November, A. D. 1852.
JOHN T. LAMPORT,
Commr. of Deeds, etc., Troy.

We the subscribing inspectors of election for electing thirteen Directors of the Troy Union Railroad Company, held this First day of November, 1852, at the Chamberlain's office in the City of Troy, pursuant to notice do certify that at the said election the following named persons received the number of votes set opposite their respective names, being a majority of all the votes received at said election, viz.:

231

1	Jonas C. Heartt	received	17	votes
2	John L. Thompson	"	17	"
3	Edmund Schriver	"	17	"
4	Leonard R. Sargent	"	17	"
5	Jared S. Weed	"	17	"
6	Russell Sage, tie	"	11	"
7	Le Grand B. Cannon	"	17	"
8	James Forsyth	"	17	"
9	Elias Plum	"	12	"
10	Martin I. Townsend	"	17	"
11	D. Thomas Vail	"	17	"
12	Uri Gilbert	"	17	"
13	Alexander G. Halsted	"	17	"
	Daniel Robinson, tie	"	11	"

We do certify that thirteen of the first above-named persons (excepting Russell Sage) are duly elected Directors of the Troy Union Railroad Company for the ensuing year and that the said Russell Sage and Daniel Robinson each received eleven votes, being a tie between them.

Dated Troy, Nov. 1st, 1852.

LYMAN BENNETT,
J. P. NAZRO,
Inspectors.

Election of Officers by the Board for 1852-3.

Troy, Nov. 2, 1852.

The Board of Directors of the Troy Union Railroad Company met at the Troy Savings Bank this day at 3.30 p. m. pursuant to notice given by the inspectors of election according to the By-Laws of the Company.

Present, Messrs. Vail, Heartt, Cannon, Townsend, Halsted, Gilbert, Thompson, Sargent, Schriver, Weed, Forsyth.

232 The minutes of the last meeting were read and approved, and the return of the inspectors of election was also read.

Mr. Townsend offered the following Resolution which was unanimously adopted: 'Whereas the Troy & Boston R. R. Co. previous to the election of Directors for this company on the 1st day of November inst. designated Jared S. Weed and Daniel Robinson as the persons whom said company desired to have elected as Directors of this Company, as Directors on behalf of said Troy & Boston R. R. Co., and whereas said Jared S. Weed was declared duly elected by the inspectors of election and said Daniel Robinson received eleven votes legally cast at such election. Therefore Resolved that said Daniel Robinson is hereby declared duly elected a Director of this Company.'

D. Robinson Declared to be Elected Director.

Mr. Daniel Robinson then came in and was present as a Director

On motion, the Board then proceeded to Ballot for President, Vice President and executive committee and finance committee, and Mr. Cannon and Mr. Townsend were appointed tellers, who reported twelve votes cast for President, and that Mr. Vail had 11 votes for that office, whereupon

President.

D. Thomas Vail was declared to be duly elected President.

Officers, 1852-3.

The Board then proceeded to the election of Vice President. The same tellers reported 12 votes cast for that office and that Mr. Gilbert received 11 votes.

233 Vice President.

Whereupon Uri Gilbert was declared duly elected Vice President.

The Board then proceeded to the election of the Executive Committee to consist of two Directors (besides the President ex-officio), the same tellers reported 12 votes and a majority for Mr. Cannon and Mr. Weed.

Executive Committee.

Whereupon Le G. B. Cannon and Jared S. Weed were declared to be duly elected.

The Board then proceeded to the election of the Finance Committee to consist of two Directors (besides the Vice President ex-officio), the same tellers reported 12 votes and a majority for Mr. Heartt and Mr. Thompson.

Finance Committee.

Whereupon Jonas C. Heartt and John L. Thompson were declared duly elected.

On motion of Mr. Weed, a committee to be called the Land Committee, was appointed by the President.

Land Committee.

The following are the committee:
From Greenbush Railroad to Congress street, J. L. Thompson, Dan. Robinson.

From Congress street to Fulton street, Le G. B. Cannon, Uri Gilbert, J. C. Heartt.

From Fulton street to Hoosick street and the bridge, A. G. Halsted, J. S. Weed."

Mr. Carr: It appears from the minute books of the Troy
234 Union Railroad Company that in each year succeeding the one named, 1852, the stockholders of the company elected a Board of Directors, and the Board of Directors elected officers of the company, all in accordance with the By-Laws of the company, and that has continued down to the time the assessment in question in this matter was made.

I offer in evidence from the same book, from page 42, a resolution adopted at a meeting of the Board of Directors -ovember 20, 1852, as follows:

Profile Presented to Com. Council for Approval.

"Resolved, that the map, route and profile of grades for this company's road as presented by Mr. French be adopted and that the President and Directors and Chief Engineer sign the same and that they be presented to the Common Council of this city for their approval and that the same be filed in the office of the Clerk of Rensselaer County according to law."

Mr. Carr: In that connection I offer in evidence, so that it may be considered as part of the evidence in this case, the original map of the route and profile with the certificate and approval of the Common Council, filed in the Rensselaer County Clerk's office. That has the following title: "We, the subscribers whose names are hereto annexed, being the President, directors and chief engineer, do hereby certify that this is a correct map of the location of the route of the Troy Union Railroad through part of the City of Troy as made by the commissioners appointed for that purpose by an act of the legislature of the State of New York, passed June 20, 1851. Scale 30 feet per inch tracing below."

235 Mr. Carr: I also offer in evidence two resolutions, one appearing on page 44 of the minute book and one on page 45 of the same book, adopted at a meeting of the directors of the Troy Union Railroad Company, held December 1st, 1852. The first resolution on page 44 is: "Resolved, that the President of this company be authorized and directed to execute the contract between this company and the city of Troy and the several railroad companies named therein as drawn up and now presented to this Board, dated December 1st, 1852, and affix the corporate seal of this company to the same."

The resolution on page 45 is: "Resolved, that the President of this company be authorized and directed to execute a mortgage to the city of Troy in pursuance of the provisions of section 5 of the contract mentioned in the preceding resolution, and also in pursuance of the act passed June 20, 1851, and affix the corporate seal of this company to the same."

I also offer in evidence from the same book a resolution, beginning on page 57 and ending on page 58, at a meeting of the Board of Directors of the Troy Union Railroad Company, held December 1852, which reads as follows:

"Resolved, that the attorney of this company be instructed to obtain from the New York & Troy R. R. Co. on account of all the bonds purchased in the city of Troy, the cost of the same and such other expenses as are covered by the twenty-fourth section of the Troy Union Railroad contract, and submit the same to this Board."

Now I offer in evidence a resolution adopted at the same meeting of the directors of the Troy Union Railroad Company, beginning on page 58 and continuing to the top of page 60 of the minute book already referred to.

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Also a resolution which appears on page 60, at the same meeting as follows:

Mortgage to be Executed to the City of Troy.

"Resolved, that for the purpose of indemnifying and saving harmless the corporation of the city of Troy against the payment of any bonds and the interest thereon which said city of Troy or its corporation may issue under the authority of the act of the legislature of the State of New York, passed June 20, 1851, authorizing the formation of this railroad corporation which is styled the Troy Union Railroad Company, this company will at once execute and deliver to the Mayor, Recorder, Aldermen and Commonalty of the City of Troy as and for the corporation of said city, a mortgage of the railroad to be constructed by said company, its capital stock, franchises, buildings, rights and appurtenances and property of every description conditioned and covenanting for the indemnifying and saving harmless *of* said corporation of said city against the payment of any and all such bonds and the interest thereon, as it shall fall due half-yearly and also conditioned for the payment as often as once in six months to said corporation of said city of the entire net income of this railroad corporation to be applied to and for the payment and satisfaction of the interest of such bonds and the principal thereof as far as may be, and conditioned further for the faithful performance by the several railroad corporations which under said act of June 20 1851, are or may become subscribers to the stock of this Troy Union Railroad Company, of the several contracts and agreements of such railroad companies to and with the said the Mayor, Recorder, Aldermen and Commonalty of the City of Troy, and for the corporation of the City of Troy, to pay to said corporation of said city half-yearly such sum and sums as shall in the aggregate payments of all such railroad companies, amount for the first five years to six per cent. and thereafter to ten per cent. per annum on the whole amount of bonds to be issued by the corporation of said city for the purpose named in said act of June 20th, 1851, until the entire amount of both principal and interest of said bonds be fully paid and that said mortgage be signed by the president of said Troy Union

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Railroad Company, and that the corporate seal of said Troy Union Railroad Company be duly affixed thereto."

"Resolved, that the secretary be directed to inform the Common Council of the city of Troy that contracts have been executed by the several railroad corporations, who were authorized to and who have subscribed for and become the owners of stock in a railroad corporation organized under and in pursuance of the act of June 20, 1851, and the act mentioned therein, and styled the Troy Union Railroad Company, for the construction of a railroad through the whole or a portion of the city of Troy, to and with the corporation of said city, and also that a mortgage has been executed by the said Troy Union Railroad Company to the corporation of said city on the railroad to be constructed, its capital stock and franchises, to indemnify and save harmless the corporation of said city against the payment of any bonds and the interest thereon, which the said city may issue under the authority of said act, and that the said Troy Union Railroad Company are now prepared to proceed to the construc-
238 tion of said railroad as soon as the funds are obtained, and that the committee of the Common Council appointed for that purpose be requested to provide the requisite funds for the construction of the said railroad by the immediate negotiation of the city bonds authorized by the said act to be issued for that purpose."

Mr. Carr: Now I offer in evidence what appears on pages 63, 64 and 65 of the minute book previously referred to, a resolution adopted at a meeting of the Board of Directors of the Troy Union Railroad Company, held December 18, 1852, which reads as follows:

Location of Passenger House.

"Resolved, that the passenger depot of this company be located on the block bounded on the north by Fulton street, on the east by the alley between Sixth and Seventh streets, on the south by Albany street and on the west by the alley between Fifth and Sixth streets."

The resolution was adopted.

Mr. Carr: I also offer in evidence a resolution that appears on page 65 of the minute book, adopted at the same meeting of the Board of Directors:

Depot Grounds to be Purchased.

"Resolved, that the Executive Committee be authorized to purchase the property designated by the resolution of this Board as the passenger depot grounds at a sum not exceeding $105,000, clear of all rents and incumbrances and with a satisfactory title."

Mr. Carr: Now I offer in evidence what appears on page 67 of the minute book, as follows:

239 "The President laid before the Board a communication from James L. Morris, Esq., President of the New York and Troy R. R. Co., containing an offer on the part of that company to convey to the Troy Union R. R. Co., all its real estate in the city of Troy and the rights acquired under its contract with the city of Troy for the sum of $40,855.43, with interest from the first of January next.

On motion of Mr. Thompson the same was referred to the Executive Committee with power."

Mr. Carr: I also offer in evidence the following, appearing on page 70 of the minute book, resolution adopted at the same meeting of the Board of Directors.

"On motion of Mr. Heartt, Resolved, that the purchase of iron and materials for the superstructure of the road of this company be referred to the Executive Committee."

"On motion of Mr. Weed, Resolved, that the Chief Engineer advertise for proposals for the grading, bridging and superstructure of the road of this company."

Mr. Carr: I also offer in evidence from page 72 of the minute book, which appears in the meeting of the Board of Directors of the Troy Union, January 20, 1853:

"The President also reported to the Board that the Executive Committee had entered into a contract with Eaton & Gilbert for the purchase of the land selected as the site of the passenger house for the sum of $105,000, and laid the contract before the Board, and also the contract of the Rensselaer & Saratoga R. R. Co., with this company to pay tolls as if the passenger house were located between State and Albany streets. The reports were accepted and the contracts were approved by the Board and ordered on file."

240 Mr. Carr: I also offer in evidence what appears on page 73 of the minute book, a resolution adopted at the same meeting of the Board of Directors:

"Resolved, that this company will adopt as the southern termination of its road the line known as the eastern or straight line from Fourth street to its intersection with the Troy & Greenbush railroad with the understanding that this company will grade Jefferson street from the alley between Second and Third streets to the alley between River and First streets, provided that cars passing to or from this company's railroad over said Jefferson street track pay the same tolls as they would have paid had this company adopted the northern or western line."

Mr. Carr: I also offer in evidence a resolution appearing on page 74 of the minute book, adopted at the same meeting of the Board of Directors of the Troy Union Company:

"On motion of Mr. Gilbert, Resolved, that the Executive Committee be and are hereby authorized to purchase such lands as are necessary for the right of way for this road at such prices as they deem reasonable on the recommendation of the land committees in their respective districts and when they deem it expedient to purchase the whole of a lot when the road is to use a part only, that they be authorized to make such purchase."

Mr. Carr: I also offer in evidence a resolution appearing on page 75 of the minute book, adopted at the same meeting of the Board of Directors of the Troy Union:

"On motion the secretary was directed to apply to the Common Council for a resolution to be passed, in which the city shall
241 agree to release from the lien of the mortgage of this company to the city such portions of land purchased by this company and not required for railroad purposes whenever this company may wish to sell the same."

Mr. Carr: I also offer in evidence what appears on page 77 of the minute book, a part of the proceedings of the Board of Directors of the Troy Union Railroad Company, meeting of January 31, 1853, after referring to the proposals for construction. What I offer is as follows:

"After some discussion a motion was made that the contract be let to Messrs. Decker & Company, and on this motion the ayes and noes were called for and seconded. The resolution was adopted."

Mr. Carr: I also offer in evidence a resolution that appears on page 78 of the minute book in the proceedings of the same meeting of the Board of Directors:

"On motion of Mr. Heartt, Resolved, that Messrs. Decker & Company be required on entering into the contract to give personal security satisfactory to the executive committee with two or more sureties in the sum of $20,000 for the faithful performance of the contract and that 10 per cent be retained by the company until the work is completed."

Mr. Carr: I also offer in evidence a resolution adopted at the same meeting of the Board of Directors appearing on page 78 of the minute book:

"On motion. Resolved, that the executive committee be authorized to contract for the sale or exchange of any land purchased by this company upon the recommendation of the land committee that the same will not be wanted for railroad purposes and may be advantageously sold or exchanged."

242 Mr. Carr: I also offer in evidence the resolution adopted at a meeting of the Board of Directors of the Troy Union Railroad Company held February 8, 1853, appearing on page 79 of the minute book:

"On motion of Mr. Weed—Resolved, that the application be made immediately for the appointment of commissioners in all such cases as the executive committee may direct."

Mr. Carr: I also offer in evidence a resolution adopted at a meeting of the directors of the Troy Union Railroad Company, held February 14, 1853, appearing on page 81 of the minute book:

"On motion—Resolved, that the Common Council be requested to lay out a street in the alley between Fifth and Sixth streets and between Fulton and Albany streets of the width of 40 feet by taking 20 feet in width from the westerly side of the grounds of this company and that the alley between Sixth and Seventh streets from Fulton to Albany streets be left its present width."

Mr. Carr: I also offer in evidence a resolution adopted at a meet-

ing of the Board of Directors of the Troy Union Railroad Company held February 21, 1853, appearing on page 83 of the minute book:

"Mr. Weed—Moved that this company accept the proposition of the New York & Troy R. R. Co. as set forth in the letter of Jas. L. Morris, President, dated December 27, 1852, and as subsequently modified as to the amount, and that this company will pay to the New York & Troy R. R. Co. $37,809.83 for all its real estate in the city of Troy, and the rights acquired under its contract with the city, with interest on said sum from 1st of January, 1853."

243 Mr. Carr: I also offer in evidence the following from the proceedings of the directors of the Troy Union Railroad Company at a meeting held March 14, 1853, appearing on page 89 of the minute book:

"An agreement drawn up between this company and the New York & Troy R. R. Co. was submitted to the Board and read—to the purport that this company will assume the performance of the contracts entered into by the New York & Troy R. R. Co. with A. Nash and P. Wells.

On motion of Mr. Weed—Resolved, that this Board approve of the agreement as now submitted to this Board between this company and the New York & Troy R. R. Co. and that the President of this company be authorized and directed to execute the same and to affix the corporate seal of this company thereto."

Mr. Carr: I also offer in evidence a resolution that was adopted at a meeting of the Board of Directors of the Troy Union Railroad Company held February 28, 1853, appearing on page 86:

"On motion of Mr. Weed—Resolved, that the contract for the construction of the road as executed by the contractors and sureties and now before the Board be approved."

Mr. Carr: I also offer in evidence from the proceedings of the Board of Directors of the Troy Union Railroad Company held February 11, 1853, what appears on page 92 of the minute book:

"Mr. Weed offered the following resolution which was adopted: Resolved that contracts for the building of the passenger house be given to the following persons provided the chief engineer approve of the same upon consultation with the parties and provided

244 they give security for the performance of the same satisfactory to the executive committee, viz.:

For the mason work to Jesse Van Zile.
" roof to Maxwell Briggs & Co.
" carpenter work to Chamberlin Otis.
" painting to J. S. Perry & Co."

Mr. Carr: I also offer in evidence the following from the proceedings of the Directors at the same meeting, appearing on page 93 of the minute book:

"On motion of Mr. Townsend, the secretary was directed to apply to the Common Council for the passage of an ordinance closing Sixth street between Albany and Fulton streets and opening a new street under and in pursuance of the Act of the Legislature for that purpose, passed April 4, 1853."

Mr. Carr: Also the following at the same meeting:

"And Messrs. Halsted, Weed and Robinson were on like motion appointed a committee to assist in procuring such ordinance."

Mr. Carr: I also offer in evidence from the proceedings of the Directors at the same meeting a resolution appearing on page 93:

"On motion of Mr. Robinson, Resolved, that this company will permit the Troy & Boston Railroad Company to lay down a track in Sixth street below Fulton to Eaton and Gilbert's track, temporarily in such place as the chief engineer may direct."

Mr. Carr: I also offer in evidence what appears in the proceedings of the Directors of the Troy Union Railroad Company at a meeting held April 18, 1853, which appears on page 95 of the minute book:

"The secretary made a report stating the action of the Com-
245 mon Council closing Sixth street between Albany and Fulton streets and opening a street between said streets and Fifth and Sixth streets 40 feet in width pursuant to the act passed April 4, 1853, also stating that notice to treat with the owners of land required had been served on this company by the city clerk; also stating that the Troy Turnpike & Railroad Company had given consent to this company to go on with the railroad under the McAdam road before the right of way was acquired by law.

The report was accepted and the president was directed to meet the committee of the Common Council and authorized to convey to the city for the uses and purposes of a public street twenty feet in width of the lands of this company lying on the east side of the alley between Albany and Fulton and Fifth and Sixth streets by deed and to affix the corporate seal of this company and to execute the same."

Mr. Carr: I also offer in evidence the following from the proceedings of the same meeting of the Directors appearing on page 96 of the minute book:

"On motion of Mr. Weed, Resolved, that the contract for masonry and iron work in the passenger house included in their proposal be given to Messrs. Jacobs & Caswell upon their giving security, the same as is required of the other contractors on the passenger house by the resolution of the Board at the last meeting."

Mr. Carr: I also offer in evidence what appears in the proceedings of a meeting of the Directors of the Troy Union Railroad Company held May 9, 1853, appearing on page 98 of the minute book:

"The Pres't submitted the contracts as drawn up and executed by the contractors for the passenger house and their sureties and
246 the same were approved by the Board and the Pres't was directed to execute the same and affix the corporate seal to each."

Mr. Carr: I also offer in evidence the following from the proceedings of the Board of Directors of the Troy Union Railroad Company at a meeting held May 26, 1853, appearing on page 101 of the minute book:

"On motion of Mr. Townsend: Resolved, that the Exect. Comt. be authorized to pay Eaton & Gilbert the balance of the $105,000 purchase money now due them, upon receiving proper deeds. If Eaton & Gilbert will give possession immediately of the Depot Grounds Eaton & Gilbert to be at liberty to remove their property therefrom

at any time during next week. The Exect. Comt. to make such deduction for rent and interest as may seem to them equitable."

Mr. Carr: I also offer in evidence what appears in the proceedings of a meeting of the Board of Directors of the Troy Union R. R. Co., held June 13, 1853, appearing on page 104 of the minute book:

"A communication from the Chamberlain of the City calling for provision to be made by this Co. for the first Six months' interest at 6 per cent. on $450,000 of City Bonds loaned to this Co. was received and thereupon it was resolved that the Treas. of this Co. be directed to pay the interest on said Bonds due 1st July prox."

Mr. Carr: I also offer in evidence the following, what appears in the proceedings of a meeting of the Board of Directors of the Troy Union R. R. Co. held July 13, 1853, appearing on page 109 of the minute book:

"The object of the meeting was stated to be to obtain the approval and authority of the Board for the execution of a contract be-
247 tween this Co. and Abram Nash and Alfred B. Nash which was read. On motion of Mr. Weed, Resolved, that the Vice Pres't of this Co. be authorized and directed to execute the contract above mentioned now presented to this Board and affix the corporate seal thereto."

Mr. Carr: Also the following:

"A contract drawn up between this Co. and Dudley Blanchard, contractor for the construction of Iron Bridges over Hutton, Liberty, Pine and Fifth streets was presented and read. On motion of Mr. Thompson, Resolved, that the Ch. Engineer be authorized and directed to execute the contract above mentioned now presented to this Board."

Mr. Carr: I offer in evidence the following from the proceedings of a meeting of the Board of Directors of the Troy Union R. R. Co., held September 29, 1853, appearing on pages 119 and 120 of the minute book:

"Mr. Halsted from the Comt. appointed on the 25th Aug. last to meet a Comt. from the Troy & Boston R. R. Co. on the subject of exchange of Land near the Depot, presented the Report of the Comt. which was accepted and the following resolution was adopted: Resolved, that this Company will exchange so much of the lot on the Southwest corner of Sixth and Albany streets bought of O. Eaton as is not wanted for the use of this road it being 55 feet on Albany street, 70 feet on the South line, 35 feet on the Divivion line between said Lot and the Lot owned by E. D. Beach and 38 and one-half feet on the Easterly line together with buildings and materials on the whole of the lot purchased of O. Eaton, with the Troy and Boston R. R. Co. for a lot owned by said Company on the Northwest Corner of Sixth and Fulton Streets, said lot being 95 feet on Fulton Street
248 and 26 feet on Sixth Street, said lot to be free of incumbrances, and that the President be authorized to execute a deed of that part of said Eaton lot according to the annexed description marked A. (see files) by signing the same officially and affixing the Corporate seal of this Co. thereto and that the Secretary be authorized to exchange Deeds with the Troy & Boston R. R. Co."

Mr. Carr: I offer in evidence the following from the proceedings of a meeting of the Board of Directors of the Troy Union R. R. Co. held October 17, 1853, appearing on page 125 of the minute book:

"Resolved, that the Treas. be paid $422.68 money advanced by him to pay the City taxes for this Co. for 1853."

Mr. Carr: I also offer in evidence the proceedings of a meeting of the Board of Directors of the Troy Union Railroad Co. held November 8, 1853, which appears on page 139 of the minute book:

"On motion of Mr. Gould, Resolved, that the Four R. R. Corporation Stockholders in this Company be requested to guarantee the payment in the same manner as before of a further sum not exceeding $50,000 by each of the Bonds of the City of Troy to complete the Construction of the Troy Union R. R. and that the Vice President and Secretary be a Committee to prepare a statement to present to the said R. R. Corporations."

Mr. Carr: I offer in evidence from the proceedings of the Board of Directors of the Troy Union Railroad Company at a meeting held December 20, 1853, which begins at the bottom of page 144 and continues to and including pages 146 of the minute book. It relates to the fixing of an agreement for the payment of the rent for
249 the property of the Rensselaer & Saratoga Railroad Company.

"The Chief Engineer presented a communication to the Board of which the following is a copy:

'The undersigned having been designated in the agreement of which the annexed is a copy to fix and determine the tolls to be charged by the Rensselaer and Saratoga R. R. Co., for the passage of the cars mentioned in the fifteenth section of the Said Agreement across the bridge of said company over the Hudson River as mentioned in said Agreement, do hereby in pursuance of the provisions of said agreement fix and determine such tolls as follows, to-wit—the rate of such tolls for the passage of such cars across the said bridge shall be such as will amount monthly to the sum of Nine Hundred and Fifty-eight 34-100 Dollars ($958.34).'

Troy, Oct. 20.

'L. R. SARGENT.'
'E. FRENCH.'

On motion of Mr. Gould the following preamble and resolution was adopted:

Whereas by the contract dated December third, 1852, between the City of Troy and the several R. R. Co., parties thereto, it is provided by the fifteenth section that the Troy Union R. R. Co., shall pay monthly to the Rensselaer and Saratoga R. R. Co., the tolls charged by the latter for the passage of cars across the bridge of the latter Company and whereas it is contemplated in the said section of said contract that the said Company shall agree upon the rate of said tolls—and whereas the Said Company in pursuance of the
250 provisions of Said Section have agreed upon the rate of said tolls for the passage of cars across the said Bridge—therefore, Resolved, that the President of the company be authorized and di-

rected to execute on the part of this Company a contract to and with the Rensselaer and Saratoga R. R. Co., obligating this Company to pay the Rensselaer and Saratoga R. R. Co. the sum of Eleven thousand five hundred Dollars ($11,500) per annum, payable in equal monthly payments of $958.34 as the rate of tolls fixed and determined under and in pursuance of the provisions of said contract and affix the Corporate seal thereto. Such contract to be executed in like manner by Said Rensselaer and Saratoga R. R. Co., and the period from which such tolls shall begin to accrue shall be the time when such bridge is ready for the use intended and specified in said general contract.

On motion, the Fin. Comt. was directed to prepare a contract in pursuance of the foregoing preamble and resolution."

Mr. Carr: I offer in evidence what appears in the proceedings of the Board of Directors of the Troy Union R. R. Co. at a meeting held January 9, 1854, on page 147 of the minute book:

"Mr. Gould from the Fin. Comt. reported that the Guaranties of the several Cos., and of this Co., had been executed and delivered to the City of Troy to indemnify against the recent Second issue of Bonds and that 100 Bonds of $1,000 each had been received and disposed of and the proceeds being $100,037.50-100 had been received and placed to the credit of this Co., in the Merchants' and Mechanics' Bank."

Mr. Carr: I also offer in evidence the following from the
251 proceedings of the Board of Directors at the same meeting appearing on page 148 of the minute book:

"On motion, the Executive Committee was directed to effect an insurance in some good Company to the amount of $30,000 on the New Passenger House."

Mr. Carr: I also offer in evidence what appears in the proceedings of the Board of Directors at the same meeting, on page 149 of the minute book:

"On motion of Mr. Vail the Land Committees of the Several Districts were directed to sell all the Land of this Co., not required for R. R. purposes as soon as may be."

Mr. Carr: I also offer in evidence what appears in the proceedings of a meeting of the Board of Directors of the Troy Union R. R. Co. held February 13, 1854, from page 155 of the minute book:

"Mr. Gould from the Finance Comt. reported that $25,000 more of bonds of the city (second issue) had been received and disposed of and the proceeds deposited to the credit of this Co., in the Merchants and Mechanics Bank."

Mr. Carr: I also offer in evidence what appears in the proceedings of a meeting of the Board of Directors of the Troy Union Railroad Company, held March 11, 1854, from page 159 of the minute book:

"A motion was made that Alexander McCoy be appointed Superintendent of the Depot and Track of this Co., at a salary of $1,000 a year. On this motion the ayes and noes were called for and seconded and recorded, and the motion was carried."

Mr. Carr: I also offer in evidence from the proceedings of a meeting of the Board of Directors of the Troy Union Railroad

252 Company, held March 25, 1854, from pages 164, 165, 166 of the minute book, a preamble and resolution with reference to the particular tracks and part of station which the different companies were to have:

"The following Preamble and Resolution were adopted. (The offices and tracks to be occupied by the Rensselaer and Saratoga and Troy and Boston R. R. Companies, respectively, having first been fixed by lot between them so as to be inserted therein.)

Whereas, by the original contract between this Company, the City of Troy, and the Four R. R. Companies owning the Stock of the Troy Union R. R. Co., it is provided that each of Said Companies shall have equal rights and privileges in the Track and Passenger House of the Troy Union R. R. Co., and whereas, the following appropriation of Passenger Rooms and Tracks in the Passenger House has been agreed to by a committee of one representing each of Said Roads, viz.:

To the Hudson River R. R. Co.—The South Suite of Passenger Rooms and the Track passing through the West Middle doors.

To the Troy and Boston R. R. Co.—The South Middle Suite of Passenger Rooms and the track next Easterly of the track used by the Hudson River R. R. Co.

To the Rensselaer and Saratoga R. R. Co.—The North Middle Suite of Passenger Rooms and the track next West of the one appropriated to the Hudson River R. R. Co.

To the New York Central R. R. Co.—The North Suite of Passenger Rooms and the track next West the one appropriated to the Rensselaer and Saratoga R. R. Co.

253 This appropriation of Tracks being with the Condition and Agreement that any of the Tracks may be used by the Several Companies respectively, provided such use does not interfere with the Trains of the respective Companies to whom they are appropriated. Therefore, resolved, the foregoing appropriation of Rooms and Tracks be and hereby is made subject to the present and future Rules, Regulations and Policies of this Company. The following distribution of Rooms among the Several Companies in the North and South Towers of the Passenger House was made by lot between them and approved by the Board, viz.:

To the Rensselaer and Saratoga R. R. Co.—Third Story North Tower.

To the New York Central R. R. Co.—Fourth Story North Tower.

To the Troy and Boston R. R. Co.—Third Story South Tower.

To the Hudson River R. R. Co.—Fourth Story South Tower.

Resolved, that the rent of the Second Story of the North Tower, to the Rensselaer and Saratoga R. R. Co., if desired by Said Company be and the same is hereby fixed at $100 per annum."

Mr. Carr: I also offer in evidence what appears in the proceedings of a meeting of the Board of Directors of the Troy Union R. R. Co., held April 10, 1854, from page 168 of the minute book:

"Resolved, that the Refreshment Rooms be leased to Mark H.

Wooster for the term of 3 years from May 1st next at a rent of
$600 for the 1st year, $900 for the 2nd year and $1200 for the 3rd
year, payable quarterly, upon his giving security for the rent
254 and on condition that the Rooms shall be kept in such a style
and manner as the Board shall approve and that the Prest. be
authorized and directed to execute a lease of the same and affix the
Corporate seal to the same."

Mr. Carr: I also offer in evidence from the proceedings of the same meeting, what appears on page 168 of the minute book:

"Resolved, that the Hudson River R. R. Co., ticket office in the Passenger House have permission to sell tickets for the Western R. R. and the Harlem R. R."

Mr. Carr: I also offer in evidence from the proceedings of the Board of Directors of the Troy Union Railroad Company, at a meeting held August 25, 1854, what appears on pages 182 and 183 of the minute book:

"Resolved, that the Common Council of the City of Troy be requested to issue (to raise the money necessary to complete the Construction of the Troy Union R. R.) the Bonds of Said City to the amount of $27,000 having to run one, two, three and four years (in equal amounts for each length of time) from their respective dates on receiving the guaranties of the Four R. R. Companies owning the Stock of the Troy Union R. R. Co., to pay the interest and principal of said Bonds in form similar to the guaranties already given and that the Four R. R. Companies be requested to guaranty each one-fourth of Said Bonds in the same manner as they did the issue of January 1, 1854.

Resolved, that the following calls be made on the Capital Stock of this Company:

22½ per cent. payable on the 1st Sept. 1855.
22½ per cent. payable on the 1st Sept. 1856.
22½ per cent. payable on the 1st Sept. 1857.
22½ per cent. payable on the 1st Sept. 1858, and
255 that the (cancelled) Bonds of the City of Troy paid on those
dates by Said Companies respectively be received as payment
of such calls, and that either or all of the Four R. R. Companies owning Said Stock be at liberty to pay the whole sum of 90 per cent on their several subscriptions on the 1st of Sept. 1854, in lieu of the guaranty of Troy City Bonds and in full of the calls aforesaid."

Mr. Carr: I offer in evidence from the proceedings of a meeting of the Board of Directors of the Troy Union Railroad Company, held December 13, 1854, the following from pages 202 and 203 of the minute book, begin-ing with the special committee's report:

"The Special Committee appointed to devise and report a plan for the payment of the deficit of about $9,800 indebtedness of the Company, made a report recommending that the same be provided for in monthly assessments on the Four R. R. Companies running through the succeeding 18 months beginning with the month of January 1855, as follows:

Jan.,	1855	$200	
Feb.,		300	
March,		400	
April,		500	
			1,400
May,		600	
June,		600	
July,		600	
Aug.,		600	
Sept.		600	
Oct.,		600	
			3,600
Nov.,		500	
Dec.,		500	
Jan.,	1856	$500	
Feb.,		500	
March,		500	
April,		500	
			3,000
May,		650	
June,		650	
July,		650	
			1,950
Total			$9,950

256 Also that the outstanding claims against the Co., the settlement and payment thereof, and the distribution and application of the assets and means of the Co., among the different creditors be referred to and examined by the Finance Committee so that a proper proportion of the different classes of Securities, may be given to the Several Creditors.

Mr. Richards, one of the Finance Committee dissented from the report on the ground that the defict should all be paid within 12 months.

On motion, the following resolution appended to the report was adopted. Resolved, that the report of the Committee just read be accepted and adopted and that it be referred to the Finance Committee with power to car-y out the recommendations and plan therein proposed in regard to the settlement of accounts and claims against the Co., and the payment and discharge of the same with the assets mentioned in Said Report and that the Prest. and Treas. be authorized and directed to execute on behalf of this Co., the notes or other obligations of this Co., in such sums and for such times of payment as the Finance Committee may require to pay off and discharge the deficit of $9,800 set forth in Said Report and that the Four R. R. Companies be assessed monthly in the usual way to provide for the payment of Said note or obligation at maturity. Resolved, that the Prest. be authorized and directed to exceute a Deed to Horace T. Caswell now pre-

sented to this Board of certain Lands situate between North Fourth and Eighth and Jacob and Hutton Sts., and affix the Corporate Seal to the same."

Mr. Carr: I also offer in evidence from the proceedings of
257 the meeting of the Board of Directors of the Troy Union Railroad Company, held January 10, 1855, what appears on pages 207 and 208 of the minute book with reference to the payment of the indebtedness for construction, the closing of the construction account and the transfer of the account itself to the operating account:

"The Finance Committee made a report showing the progress made by them in settling and paying off the debts against this Co., on Construction account in pursuance of the resolutions of the Board, passed on the 13th and 28th Dec., last—by which it appears that debts to the amount of $47,301.83 have been paid—and that $6,011.79 remain to be paid—that there is on hand of reliable assets $4,377.45 and proceeds of Sales of Real Estate to be collected $3,625, and that the Committee have issued of the notes of this Co., executed by the Prest. and Treas. to the creditors of the Co., in settling and paying the debts aforesaid—the amount of $1,801, over the amounts authorized by the resolutions of the Board passed 13th and 28th Dec. last, and the Committee recommended that the Construction account of this Co., be closed and that the balance on hand be transferred to the account of operating the Road and that all payments hereafter be made from that account and that all assessments hereafter on the Four R. R. Companies be for that account and that all lands on hand be resold at once.

Which report was read and accepted and the recommendations adopted and the following resolution passed.

Resolved: That this Board approve of the issue by the Finance Committee of the notes of this Co., executed by the Prest. and Treas.
to the creditors of the Co., in settling their claims for the
258 amount of $— over and above the amounts authorized by the resolution passed Dec. 13th and 28th as mentioned in the Report just read and hereby ratify and confirm the same and assume the payment thereof and that assessments be laid in the usual manner to provide for the payment of Said Notes at maturity and that the Construction account of this Co. be closed and that the balance on hand be transferred to account of operating the Road and that all payments be made from that account and that all assessments hereafter on the Four R. R. Companies be made for that account."

Mr. Carr: I also offer in evidence from the proceedings of a meeting of the Board of Directors of the Troy Union Railroad Company held March 14, 1855, the following from page 210 of the minute book:

"The Finance Committee reported that they had examined the accounts of the Treas. and found a balance in his hands on the 15th day of January, 1855, for accounts of Construction of the Troy Union R. R. of 4,378.82, which was on that day transferred to Running account and the Construction account closed in pursuance of the resolution of this Board—that since the date of their last report (Jan. 10, 1855), they have paid on account of claims against the Co., for

Construction, $3,613, and have recd. for Land sold by Land Committee, $885,—and that there is still due for Land sold, $2,525,—and bills unpaid against the Co., $2,692. The report was read, accepted and adopted and ordered on file."

Mr. Carr: I offer in evidence what appears in the proceedings of a meeting of the Board of Directors of the Troy Union R. R. Co., held Oct. 10, 1855, from page 222 of the minute book, as follows:

259 "Resolved, that the expense of heating the Passenger Depot, including the several offices therein as reported by the Secretary to-day, be charged a quarter to each of the R. R. Companies composing this Company, and that the Gas bills for the Passenger Rooms and offices as reported by the Secretary to-day, be charged to the respective Companies according to the amount used by each company and that hereafter the expenses of heating the depot be charged in the manner aforesaid and that the Gas bills for Passenger Rooms and offices be paid by the respective Companies themselves."

Mr. Carr: I offer in evidence from the proceedings of the same meeting, what appears on page 222:

"Resolved, that the following calls be made on the Capital Stock of the Company:

22½ per cent. payable on the 1st Nov. 1855.
22½ per cent. payable on the 1st Oct. 1856.
22½ per cent. payable on the 1st Oct. 1857.
22½ per cent. payable on the 1st Oct. 1858, and that the cancelled bonds of the City of Troy paid on the 1st Oct., 1855, and to be paid on the 1st of October in each of the years 1856, 1857 and 1858, be received as payment of such calls."

Mr. Carr: Now I offer in evidence what appears on pages 4, 5, 6 and 7 of minute book No. 2, which is a copy of the By-Laws of the company. They were amended.

"By-Laws of The Troy Union Railroad Co.

The seal of the company shall be a locomotive surrounded by the words 'Troy Union Railroad Co. incorporated 1851.' And shall be kept by the Treasurer.

260 The annual election for directors shall be held on the first Monday in November in each and every year at such place in the City of Troy as the directors may designate.

The polls shall be opened at 12 m. and continued open for one hour.

These elections shall be held under the supervision of three inspectors or a majority of them to be chosen by the Board of Directors annually.

Notice of election shall be published in a Troy newspaper for 10 days prior to the day of election. In case of an equal number of votes for any two or more directors the directors elected shall by ballot determine who shall be entitled to be said directors.

The inspectors of election shall immediately after the election notify each director of his election and call a meeting of all the

directors for organization. This meeting shall be on the Wednesday succeeding the election at 3½ o'clock p. m.

Any vacancy during the year in the Board of Directors may be filled at any meeting of the Board.

In addition to this annual meeting there shall be stated meetings of the Board at such times as the Board may designate from time to time.

The presence of a majority of the directors at the time and place of meeting shall be necessary to constitute a quorum for the transaction of business but a less number may adjourn from time to time until a majority shall be present.

The Board of Directors at their annual meeting shall elect from their number by ballot a President and Vice President and the several standing committees to be named hereafter who shall hold office for one year unless sooner removed by a majority of all the directors.

261 A suitable person to perform the duties of Secretary and Treasurer shall also be appointed and shall hold office until removed.

The President shall have authority to call special meetings of the Board and he shall call special meetings when desired to do so by two directors. He shall preside at all meetings, and be ex officio chairman of the Executive Committee, and he shall possess the powers which are usually exercised by presiding officers of incorporated companies. But he shall report his official acts at the first meeting of the Board.

The Vice President shall in the absence of the President, or in case of vacancy or inability to act, be clothed with the powers of President and discharge his duties. He shall be ex officio Chairman of the Finance Committee.

There shall be two standing committees, viz.: Executive Committee composed of the President ex officio and two other directors. Finance committee composed of the Vice President ex officio and two other directors.

It shall be the duty of the Executive Committee to exercise a general supervision over the company's concerns and they or a majority of them shall have authority to act in cases of emergency during the recesses of the Board, always however reporting their acts to the Board.

The Finance Committee are to have a general supervision of the finances of the company, to see that the books and accounts of the company are kept in a systematic manner, to examine the vouchers and accounts of the Treasurer and certify to their correctness.

It shall be the duty of the Secretary to keep regular minutes of the proceedings of the Board of Directors. He shall cause to be
262 published the notice for the annual election of directors, and give notice to all the directors of the times and places of the meetings of the Board.

It shall be the duty of the Treasurer to receive for safe keeping all the company's funds and to disburse the same on proper vouchers

He shall have charge of the necessary books and papers and under the Finance Committee devise a plan for the keeping of the company's accounts.

No contract shall be made on behalf of this company by any officer or agent except by authority of the Board of Directors.

At stated meetings of the Board the following order of business shall be observed:

1. Reading minutes.
2. Presentation of Petitions.
3. Reports of committees and officers of the Board.
4. Miscellaneous business.

At special meetings the business for which the meeting was called shall be first disposed of before any other business is in order.

All reports of committees shall be made to the Board in writing.

On the demand of a director if seconded the ayes and noes shall be taken on any question or motion presented for the decision of the Board and shall be recorded on the minutes.

A vote of two-thirds of all the directors shall be necessary to alter, modify or repeal any section, part or portions of these By-Laws."

Mr. Carr: I offer in evidence a resolution adopted at a meeting of the Board of Directors of the Troy Union Company held
263 April 28, 1856, that appears on page 20 of the minute book, which was minute book No. 2, the last one referred to:

"Resolved, that the subject of the draft on the New York Central R. R. Co. for the amount of the call due November 1, 1855, on the stock of this company and also the subject matter of payments by the several companies on account of construction and all unsettled balances with the several companies be referred to the finance committee and treasurer for adjustment."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors at a meeting held May 17, 1856, that appears on page 22 of the minute book No. 2.

"The committee appointed on the 10th October, 1855, to investigate and report on the subject of charging rent for the rooms in the passenger house occupied by the several companies made a report, of which the following is a copy:

The committee to whom was referred the consideration of the subject of fixing rent for the rooms now occupied by the companies forming the Troy Union R. R. Co., report that in their opinion the companies respectively should pay as a rent for said rooms at the rate of $1000 per annum, payable monthly, said rent to commence from the date of the first occupancy thereof, and that no advance on the rent of said rooms shall be made during the ensuing five years from May 1, 1856, it being understood that nothing herein contained shall be construed as an absolute lease of said rooms."

Mr. Carr: Also the following: "A motion was made that the report be accepted by the Board, and that motion was adopted."

264 Mr. Carr: I offer in evidence the following from pages 24 and 25 of minute book No. 2 of proceedings at a meeting of the Directors May 20, 1856:

"Mr. Sage made a statement setting forth a proposition from the New York Central R. R. Co. to use the two easterly tracks in the passenger house and the land lying east of the passenger house belonging to this company for the purposes of a local freight depot for that company.

Whereupon on motion the following resolutions were adopted:

Resolved, that in consideration that the Central Railroad Company shall establish its local freight depot in the City of Troy, it is hereby agreed that this company for that purpose will give the use of the lands east of the passenger depot belonging to this company for the term of ten years, and they will also allow the said company to use the two east tracks in the passenger depot for the purposes of loading and unloading freight, subject however to be removed whenever the passenger business of said depot shall require the use of said tracks, and that any alterations, additions or improvements on said premises shall be subject to the approval of the Executive Committee of this Board, and that any additional cost to said Union Company for taxes or insurance growing out of the use herein contemplated shall be paid by the Central Company."

Mr. Carr: Also the following resolution adopted at the same meeting:

"Resolved, that the President of this company be authorized to execute a lease to the New York Central Railroad Company in accordance with the aforesaid resolution."

265 Mr. Carr: Also the following resolution:

"Resolved, that the Secretary be directed to furnish a copy of the foregoing preamble and resolutions to each of the companies' stockholders of this company."

Mr. Carr: I offer in evidence the following from a meeting of the Board of Directors held November 5, 1856, at the organization of the Board for that year, the following:

"On motion the By Laws of the late Board of Directors were adopted as the By-Laws of this Board with this alteration, viz.: That there shall be but one standing committee, to wit, the Executive Committee and that the duties of the former Finance Committee shall devolve upon the Executive Committee."

Mr. Carr: Also the following:

"On motion of Mr. Townsend, Resolved, that the Treasurer be directed to notify the several companies of their respective balances due to this company and that there are no funds to pay the current expenses of running the road of this company and that unless payments are made immediately the business of the road must necessarily cease."

Mr. Carr: Also the following at the same meeting:

"On motion of Mr. Weed, Resolved, that the Treasurer be directed to call upon the four stockholders of this company respectively each for a sum equal to one-fourth part of the interest on bonds falling due on the 1st April prox."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors held March 21, 1857:

"Mr. Robinson moved that Abram Van Tuyl be elected
266 superintendent of this company during the pleasure of the Board at the rate of $800 salary per annum. Adopted."

Mr. Carr: Also the following from the proceedings of the Board of Directors held June 11, 1857:

"On motion, Resolved, that the President be authorized and directed to execute a deed of certain land situated on the east side of River street, south side of Union R. Road adjoining George M. Tibbits' land to George M. Tibbits for $1000 and affix the corporate seal to the same."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors held November 10, 1858:

"On motion of Mr. Weed the following resolution was adopted: Resolved, that the superintendent be directed to prohibit all carriages, wagons, carts or other vehicles from standing inside of the row of posts on the west side of the passenger house except to leave or take up passengers."

Mr. Carr: Also the following from the proceedings of the Board of Directors held November 10, 1858:

"Resolved, that the Executive Committee be authorized and directed to make an agreement on behalf of this company with the City of Troy to assign to the City as collateral security the policy or policies of insurance on the passenger house of this company and the proceeds thereof. Provided the City of Troy agrees in case of a loss at any time to devote and apply the proceeds of such insurance to the reconstruction of the passenger house, and that the President be authorized and directed to execute such agreement when made, and such assignment of policy or policies of insurance, and affix the corporate seal to the same."

267 Mr. Carr: I offer in evidence what appears in the proceedings of the Board of Directors at a meeting held December 10, 1858:

"Resolved, that the treasurer of this company be directed to collect all dues to the Union R. R. Co. from the different companies on or before the 10th of each month."

Mr. Carr: Also from the proceedings of the same meeting:

"On motion of Mr. George B. Warren, Resolved, that the Finance Committee be instructed to collect all dues to this company from the several companies under the reformed contract down to the 1st December instant."

Mr. Carr: Also at the same meeting:

"On motion of Mr. Tracy, Resolved, that certificates of stock be issued to the owners of the capital stock of this company upon surrender of the former certificates."

Mr. Carr: I offer in evidence from the proceedings of the Board of Directors at a meeting held December 29, 1858, the following:

"Resolved, that the resolution of this Board passed November 10, 1858, relative to the assignment of policies to the City be altered and amended so as to extend to and embrace and include any renewals of policies and also any changes of policies and any new policies which may be hereafter effected upon the said passenger house and

that thus altered and amended the President be authorized and directed to execute the agreement th-rein contemplated and such assignment of policies and affix thereto the corporate seal."

Mr. Carr: Also the following from the proceedings at the same meeting:

268 "Resolved, that the By-Laws of this company be altered and amended so that the executive committee shall be composed of five members, viz.: the President of this company and one member from each of the four companies' stockholders of this company."

Mr. Carr: I offer in evidence from the proceedings of the Board of Directors, at a meeting held January 12, 1859, the following:

"On motion of Mr. Tracy, Resolved, that a stationmaster be appointed for this company, whose duties shall embrace all the duties of the office of superintendent, lately abolished.

Also Resolved, that William H. Bonesteel be appointed stationmaster under the foregoing resolution at the salary of $50 a month during the pleasure of the Board.

Also Resolved, that the President be authorized to confer with Dunspaugh in regard to the cost of taking care of the track of this company."

Mr. Carr: I offer in evidence the following resolution adopted at the same meeting of the Board of Directors:

"Resolved, that the treasurer be instructed in making out the monthly assessments for expenses of this company to exclude all accounts and claims of a date prior to the 1st of July, 1858."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors at a meeting held January 22, 1859:

"On motion of Mr. Willard, Resolved, that the President be authorized and directed to execute an assignment to the corporation of the City of Troy of the six several policies of insurance

269 upon the passenger house of $5000 each in the following companies, viz.: the Market Fire Insurance Company of New York, the Fulton Fire Insurance Company of New York, the Pacific Fire Insurance Company of New York, the Corn Exchange Fire & Inland Nav. Ins. Co. of N. Y., the Mechanics' Fire Ins. Co. of Brooklyn, the Norwich Fire Ins Co. of Norwich, Conn., now before this Board and affix the corporate seal to the same, and that this company accept of said policies at the premium of 75c. and that the President of this company be authorized and directed to execute any other or further assignment of policies to the City of Troy on the said passenger house at any time as occasion may in the future require and affix the corporate seal to the same in order to carry out the agreement made between this company and the City of Troy on this subject dated January 20, 1859."

Mr. Carr: I offer in evidence the following from the proceedings of the directors at a meeting held March 25, 1859:

"Mr. Tracy offered the following resolution, which was adopted:

"Resolved, that the New York Central R. R. Co. be permitted and authorized to construct a track for their own use between River street and North Third street on the lands of the Union Railroad

Company, such track to be removed on thirty days' notice from this company, the route and manner of construction to be approved by the Executive Committee."

Mr. Carr: Also the following from the proce-dings at the same meeting:

"On motion of Mr. Cramer, Resolved, that it be referred to the Executive Committee with power to establish a telegraph station in the passenger house for the use of the four companies and
270 assess the expenses upon the four companies."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors at a meeting held April 22, 1859:

"On motion, Resolved, that a telegraph station be established in the passenger house and that it be referred to Mr. Weed and the four superintendents to see to the construction of the same, and the employment of an operator for the a/c of the four companies, the expenses to be assessed equally on said companies."

Mr. Carr: I also offer in evidence the following from the proceedings of the Board of Directors held July 14, 1859:

"On motion, Resolved, that the subject of painting the woodwork and roof of the passenger house and ventilating the floors be referred to the Executive Committee with power."

Mr. Carr: I also offer in evidence what appears in the proceedings of the Board of Directors at a meeting held September 17, 1859:

"The President announced the object of the meeting to be the consideration of the condition of the tunnel under Congress street. After discussion, it was, on motion of Mr. Thompson, Resolved, that the subject of the condition of the tunnel under Congress street and the necessary repairs be referred to the Executive Committee with power."

Mr. Carr: I also offer in evidence the following from the proceedings of the Board of Directors held October 12, 1859:

"Mr. Weed from the Executive Committee reported the result of an examination of the tunnel below Congress street made by
271 Messrs. Howes, Clark and Jacobs, who reported a plan for temporary repairs to the tunnel which in their judgment would render it safe until spring and who also stated that the work of rebuilding could not be suitably done this fall.

On motion of Mr. J. M. Warren the Executive Committee were authorized to carry out the plan reported by Mr. Weed."

Mr. Carr: I also offer in evidence the following from the proceedings of the Board of Directors at a meeting held October 20, 1859:

"A communication from Mr. D. T. Vail to the President in relation to the tunnel between Congress and Ferry streets and explaining a plan for repairs proposed by Mr. Gray, engineer of N. Y. Central R. R. Co. was read and ordered on file.

Mr. Robinson offered the following resolution:

"Resolved, that the President be authorized to procure a certificate from the mechanics who have constructed the present repairs to the tunnel to the effect that the same are substantial and sufficient to

render it free from danger, and in case they decline to give such certificate that he be authorized to have such further repairs made by them as that they will give such certificate.

The resolution was adopted."

Mr. Carr: Also the following at the same meeting:

"On motion of Mr. Cramer, Resolved, that the President be authorized to contract for the painting of the roof of the passenger house."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors at a meeting held December 25, 1859:

"On motion, the following preamble and resolutions were adopted:

272 Whereas, the four railroad companies' stockholders of this company have to pay largely for the facilities offered by the Troy Union R. R. depot and for the accommodations thereby provided for passengers and have no right to solicit passengers out of the depot, and whereas the Harlem R. R. Co., by its agent in this city, is trespassing upon the grounds and upon the rights of the stockholders of this company by openly and persistently soliciting passengers on their way to the depot and by hawking tickets on the sidewalk on the south side of the depot without being subject to any of the burthens or expenses attending the maintenance of said depot much to the annoyance of passengers and in derogation of the rights of the several companies.

Therefore, Resolved, that the Mayor be respectfully requested to revoke the license of James Griffin, the present agent of the Harlem R. R. Co. for the sale of their tickets in this city.

Resolved, that a copy of the foregoing preamble and resolutions be furnished to his Honor, the Mayor."

Mr. Carr: I also offer in evidence the following from the proceedings at the same meeting:

"On motion of Mr. Thompson, Resolved, that the treasurer be directed to put into the assessment for the month of May next and to pay the principal sum due to N. B. Warren & Bros. on two leases of lots, one owned by James Farrell and one lately owned by John Duffy ($300 each) upon which this company now pays a rent to G. H. Warren."

Mr. Carr: Also the following from the proceedings of the same meeting:

"The following certificate was read to the Board and ordered to be copied into the minutes:

273 "Troy, Oct. 28, 1859.

E. Plum, Esq., President of the Union Railroad Co.

DEAR SIR: At the request of the Directors of the Troy Union Railroad Company we have carefully made an examination of the arch of the tunnel of said road between Congress and Ferry streets. We are of the opinion that with the timber supports which have recently been put under the central part of the arch it is perfectly secure and safe from falling and safe for the passage of freight and passenger

trains. We would recommend to your Board of Directors to have more permanent supports or a part of the arch rebuilt the coming summer. Until that time we have no doubt of its security for all of the purposes for which it was designed.

Very respectfully yours,

O. G. CLARK.
J. JACOBS.
W. B. HOWES.
H. T. CASWELL."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors at a meeting held December 30, 1859:

"The President stated that the meeting had been called for the purpose of taking immediate action in regard to the disaster to the passenger house of this company which occurred at three o'clock this morning, by which about 160 feet of the roof and the north and part of the east wall of the passenger house had fallen down."

Mr. Carr: Also the following at the same meeting:

274 "On motion, Resolved, that the Executive Committee be directed to take such measures as may be deemed necessary in reference to the disaster which has occurred to the passenger house."

Mr. Carr: I also offer in evidence what appears from the proceedings of the Board of Directors held December 31, 1859, the following:

"On motion of Mr. Weed, Resolved, that Messrs. Cramer and Tracy in connection with the superintendents of Rensselaer and Saratoga and New York Central Railroads be authorized to make all necessary repairs of their respective offices and apartments in order to fit them for use and occupation as soon as may be and that the same be done at the expense of this company."

Mr. Carr: I also offer in evidence the following from the proceedings of the Board of Directors at a meeting held January 11, 1860:

"The minutes of the last three meetings were read and approved. Also, the minutes of a meeting of the Executive Committee held on the 3rd inst. were reported to the Board and approved and ordered on the minutes of the Board.

The following is a copy:

Resolved by the Executive Committee, Messrs. Plum, Vail, Tracy, Robinson and Cramer being present, also George B. Warren, Vice-President:

That the President be authorized and directed to enter into a contract with Messrs. Harris & Briggs, of Springfield, to furnish the iron and put in an additional set of tie rods to each truss at the south end of the roof on the passenger house of one inch and a half iron of the very first quality to be tested and approved by an agent of this

275 company to be sent to Springfield at the expense of this company at a cost of not exceeding $105.50 for each set consisting of two rods each for seven sets to be put in and affix the corporate seal to the same. And if on examination by Mr. Harris it shall appear that any additional supports are required for the other trusses the President is further authorized to make such further contract in that respect as may be deemed expedient."

Mr. Carr: I also offer in evidence the following from the proceedings of the Board of Directors at a meeting held January 24, 1860:

"On motion of Mr. Weed, Resolved, that the Executive Committee be requested to have the materials of that part of the depot which has fallen overhauled, taken apart, assorted and properly cared for and an inventory made of such parts as are fit to be used in its reconstruction and also procure proposals for the rebuilding of that part of the depot as soon as practicable and report to the Board."

Mr. Carr: I also offer in evidence the following from the proceedings of the directors at a meeting held February 8, 1860:

"Resolved, that the newsroom and stand in the passenger house be let to Holcomb for one year from 1st February inst. at 150 upon his furnishing satisfactory security for the payment of said rent."

Mr. Carr: I also offer in evidence the following from the proceedings of the Board of Directors at a meeting held June 7, 1860:

"The President laid before the Board the plan and estimates of Messrs. Clark and Howes for rebuilding the tunnel between Congress and Ferry streets of which the following is a copy:

276 E. Plum, Esq., President Troy Union R. R. Co.

DEAR SIR: Herewith we send you our plan of new arch for tunnel between Congress and Ferry streets. We think it is in the best form we can make it under the circumstances. By this plan we have concluded to raise the center of the arch sixteen inches higher than the present one and to have the stone work on the top from where we make the new arch to be taken up and relaid solid in cement. We think it will be necessary to make about three hundred feet in length of the tunnel new, about one hundred and sixty feet from the north end and about sixty feet from the south end of the tunnel will remain as it is. We think the cost for three hundred feet will be about $6,000.

Troy, June 7, 1860.

Respectfully yours,

W. J. HOWES.
O. G. CLARK.

On motion of Mr. Cramer, Resolved, that Messrs. Plum and Vail be directed to employ Mr. Clark to rebuild the tunnel according to the plan now submitted by Messrs. Clark and Howes, the said plan to be approved or altered as the said Plum and Vail may direct."

Mr. Carr: I also offer in evidence the following from the proceedings of the Board of Directors at a meeting held August 8, 1860:

"On motion of J. L. Thompson, Resolved, that the Troy & Boston R. R. Co. have a lease of the south refreshment room upstairs, lately occupied by Jennings at the rent of $100 a year."

277 Mr. Carr: I also offer in evidence the following from the proceedings of the Board of Directors at a meeting held October 1, 1860:

"The resolution in relation to issuing bonds which was laid upon the table at the last meeting was called up, discussed and amended and as amended adopted in the words and figures following:

Resolved, that this company issue its bonds for an amount not exceeding $20,000 payable in 1, 2, 3, 4 and 5 years with interest at 7 per cent. semi-annually with coupons attached to pay the expenses of rebuilding the passenger house and tunnel, provided each of the 4 companies take ¼ of said bonds and pay the par value thereof to this company and that said bonds as they mature shall be received in payment of any assessment made to raise moneys to provide means to pay said bonds."

Mr. Carr: Also the following from the proceedings of the Board of Directors at a meeting held October 5, 1860:

"On motion Resolved, that the resolution heretofore adopted by this Board in relation to the issue of bonds be rescinded and that instead thereof it is hereby further Resolved, that for the purpose of paying the expenses of rebuilding the passenger house and tunnel an assessment of $20,000 be laid this day upon the 4 companies composing this company payable immediately and that the same be paid to this company in cash except the ¼ payable by the Troy & Boston R. R. Co. which may be paid in that company's notes running 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 months with interest from this date."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors at a meeting held January 9, 1861:

278 "Resolved, that the President be authorized and directed to execute a lease of refreshment and news rooms in the Passenger House to J. K. Jennings when the form and provisions of the same are approved by the Executive Committee."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors at a meeting held July 10, 1861:

"On motion of Mr. Vail Resolved, that the superintendent be authorized to contract for the materials necessary for the repair of the tracks of the road."

Mr. Carr: I also offer in evidence the following from the proceedings of the Directors at a meeting held October 9, 1861:

"Resolved, that this company hereby consent and agree that the Rensselaer & Saratoga R. R. Co. may occupy the upper rooms in the Passenger House corresponding with those occupied by the Troy & Boston R. R. Co. as their general office, provided that it does not affect the amount of rent payable by Jennings for said rooms."

Mr. Carr: Also the following at the same meeting:

"Resolved, that the President be authorized and directed to execute the deed to John Hogan now presented to this Board of a small piece of land (Consideration $25) on the railroad near Washington street and affix the corporate seal to the same."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors at a meeting held May 12, 1862:

"The President stated that the meeting had been called in view of the destruction of the Passenger House of this company by the Great Fire on Saturday, May 10th.

279 On motion Resolved, that the matter of notifying the several insurance companies having risks upon the Passenger House—of a loss be referred to Mr. Tracy and the Secretary.

On motion of J. M. Warren Resolved, that the subject of surveys and estimates for repairs of the offices in the Depot be referred to the Executive Committee to obtain and report to this Board, and that they be authorized and directed to contract for the requisite timber immediately.

On motion of Mr. Griswold, Resolved, that the Executive Committee be directed to examine and report on the whole subject of the reconstruction of the Depot and to suggest any changes or alterations in rebuilding the same which may occur to them and report to this Board."

Mr. Carr: I also offer in evidence the following from the proceedings of the Directors at a meeting held May 19, 1862:

"On motion of Mr. Willard, Resolved, that this company proceed to the erection of a temporary bridge for the passage of railroad trains on the piers of the late bridge with the consent of the Rensselaer & Saratoga R. R. Co. at a cost not to exceed $6000 and the material of the bridge so erected shall be the property of this company and the expense of said temporary bridge be assessed monthly in the expenses of this company as may be hereafter ordered by this Board and that the whole subject of this resolution be referred to the Executive Committee with power."

Mr. Carr: I also offer in evidence the following from the proceedings of the Directors at a meeting held May 26, 1862:

280 "On motion of Mr. Vail resolved, that the President and Secretary be a committee to attend the Common Council and oppose any extension of Union street or any change or improvement by which the Union R. R. Co. shall be charged or assessed with any expenses."

Mr. Carr: I offer in evidence the following from the proceedings of the Directors at a meeting held June 11, 1862:

"The contract made by this company (by the Secretary) with H. R. Campbell & Co. for the construction of a temporary bridge (instead of L. H. Tupper), dated May 26, 1862, for the sum of $4.200 to be done in 15 working days after its date, was read and laid before the Board and approved and adopted."

Mr. Carr: Also at the same meeting:

"On motion of Mr. Weed resolved, that the Treasurer of this company be and hereby is authorized to receive from the City of Troy the money received upon the policies of insurance on the Union Depot, and that said money be used only in payment of bills and demands for the reconstruction of the Depot, and that such bills and demands be paid by the Treasurer when audited by the Executive Committee of this Board.

Resolved, that Messrs. Willard, Thompson and Heartt be a committee to obtain the insurance money from the city."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors at a meeting held July 30, 1862:

"On motion the following preamble and resolutions were adopted and a copy ordered to be sent to the Common Council of the City of Troy.

281 Whereas by an agreement made and entered into the 3d day of December, 1852, between the Mayor, Recorder, Aldermen and Commonalty of the City of Troy of the first part, the Troy Union R. R. Co. and the several companies owning the stock of said company it is provided that 'if the Troy Union R. R. Co. shall deem it advisable to take land in the City of Troy on each side of Sixth street for a Passenger House the said party of the first part hereby agrees that this may be done and that the course of Sixth street at that point shall be so changed as to pass along either or both sides of the Passenger House as may be desired by the Troy Union Railroad and that if deemed necessary by the Troy Union R. R. Co. the Common Council of the City of Troy will apply to the Legislature for the passage of a law allowing such change.

And whereas the Legislature did on the 4th day of April, 1853, pass an act by which it was provided that the Common Council of the City of Troy are hereby authorized and empowered to close up and discontinue that part of Sixth street in said city lying between Albany and Fulton streets and to lay out and open a street sixty feet wide or less between Fifth and Sixth streets and between Albany and Fulton streets including therein the present alley of twenty feet in width and taking forty feet or less in width on the east side thereof from the land of the Troy Union R. R. Co.

And whereas the Common Council of the City of Troy in pursuance of said act did at its meeting on the 16th day of April, 1853, declare a street forty feet wide between Fifth and Sixth streets and Albany and Fulton streets necessary for the public use, and appointed a committee to confer with the owners of the land required for said street.

282 And whereas said committee did on the 9th day of June, 1853, report to the said common Council that the land required belonged to the Troy Union R. R. Co., and that said company had executed a deed of the land necessary to the City of Troy which they then presented to the Common Council which was accepted upon the terms therein expressed and is recorded in the Rensselaer County Clerk's office in Book of Deeds No. 87 on page 170.

And whereas by an agreement made and entered into the 1st day of July, 1858, between the City of Troy, the Troy Union R. R. Co., and the companies owning the stock of the said road, it is provided that the Troy Union R. R. Co. may continue to occupy as heretofore the land on each side of Sixth street for a Passenger house with the course of Sixth street as at present changed so as to pass along either or both sides of the Passenger House as may be desired by the Troy Union R. R. Co., therefore,

Resolved, that this company protest against all proceedings of the Common Council to acquire title to any more of the land on the west side of the Troy Union Depot for the purpose of a public street for the reason that in doing so they violate the plain provisions of two contracts with this company and that the absolute control of such land by this company is necessary for proper police regulations in protecting passengers that arrive at and leave the Depot.

Resolved, that in case the proceedings to open said street at that

point be not discontinued, that the Secretary of this company take the necessary legal measures to prevent it."

Mr. Carr: I offer in evidence the following from the
283 proceedings of the Directors at a meeting held September 29, 1862:

"The following resolutions were adopted:

Resolved, that the refreshment rooms of this company be leased to Ferdinand Leckun at the monthly rent of thirty-three & 34-100 dollars payable on the first day of each and every month during the pleasure of this Board with the express understanding that said lease is to terminate at any time by this Board giving said Leckun one month's notice of its wish to do so. Further that said Leckun is to keep a first-class refreshment room, but no spirituous liquors are to be sold on the premises and that the President be authorized to execute a lease to said Leckun by signing his name and affixing the corporate seal thereto, said lease to contain such other conditions as the Executive Committee may direct."

Mr. Carr: Also the following from the proceedings at the same meeting:

"Whereas Messrs. Harris & Briggs Co. have made a proposition to a committee of this Board appointed at its last meeting to put a roof on the main building of the Union Depot equal to that part of the old roof rebuilt in 1860 except that there are to be no reverse curves at the foot of the trusses, and the ventilator is to extend only two-thirds the length of the building and to be located in the center thereof and be 5½ feet high, the trusses to rest on the walls to be prepared by this company for the sum of $19,000, and the old material of the roof which is estimated to be worth $2,155, but in case it amounts to more than that sum at the prices upon which that is made the excess is to be deducted from said $19,000, if less to be added thereto, it being understood that neither the under nor upper sides of the roof are to be painted.

284 Resolved, that the proposition of Messrs. Harris & Briggs Co. be accepted and that the President execute a contract for the same by signing his name officially and affixing the corporate seal of this company thereto, said contract to be approved by Messrs. D. T. Vail, E. Plum and John A. Griswold.

Resolved, that the Executive Committee be authorized to have such work done to the Union Depot as may be necessary to prepare it for the roof."

Mr. Carr: Also the following from the proceedings of the same meeting:

"Resolved, that the Rensselaer Iron Company be authorized to construct a switch and turn-out from the Troy U. R. R. track to connect the same with a track which said Rensselaer Iron Co. purpose to construct along the west side of the property known as the 'Mann property,' said switch and turn-out to be made under and subject to the direction of the superintendent of the Troy Union R. R., all expense of constructing and maintaining said switch to be at the expense of the Rensselaer Iron Co.

The above resolution last set forth was referred to Messrs. Plum, Vail and Weed with power."

Mr. Carr: I offer in evidence the following from the proceedings of the Directors at a meeting held November 10, 1858:

"On motion of Mr. Weed the following resolution was adopted: Resolved, that the Superintendent be directed to prohibit all carriages, wagons, carts or other vehicles from standing inside of the row of posts on the west side of the Passenger House, except to leave or take up passengers.

Mr. Tracy offered the following resolution which was adopted.

285 Resolved, that this Board do approve of the proposed reformed contract now before this Board between the Troy Union Railroad Company, the New York Central Railroad Company, the Hudson River Railroad Company, the Rensselaer & Saratoga Railroad Company, the Troy & Boston Railroad Company, and the Mayor, Recorder, Aldermen and Commonalty of the City of Troy, and that the President of the Troy Union Railroad Company be authorized and directed to execute and affix the corporate seal of said Troy Union R. R. Co. to six copies of said reformed contract and deliver and interchange the same in such way that each party thereto shall have a copy so executed and sealed.

The following is a copy of the said reformed contract.

This Instrument, made this first day of July, in the year one thousand eight hundred and fifty-eight, between the Mayor, Recorder, Aldermen and Commonalty of the City of Troy, party of the first part, The Troy Union Railroad Company, party of the second part, The Rensselaer and Saratoga Railroad Company, party of the third part, The New York Central Railroad Company, party of the fourth part, The Hudson River Railroad Company, party of the fifth part, and The Troy and Boston Railroad Company, party of the sixth part:

Witnesseth: Whereas, in pursuance of the provisions of an act of the Legislature of the State of New York, entitled 'An Act to authorize the City of Troy, and certain Railroad Corporations, to subscribe for, and become the owners of Stock for the Construction of a Railroad through the whole, or some portion of the City of

286 Troy; passed June 20th, 1851;' The Troy Union Railroad Company was organized for that purpose, and has constructed a Railroad through certain portions of the City of Troy.

And whereas, the party of the first part has commenced a suit in the Supreme Court of the State of New York, against the Troy Union Railroad Company, the Rensselaer and Saratoga Railroad Company, the New York Central Railroad Company, the Hudson River Railroad Company, and the Troy and Boston Railroad Company, to enforce the foreclosure of the mortgage executed by the Troy Union Railroad Company to the party of the first part, bearing date the first day of December, 1852, and executed on or about the sixteenth day of the same month, and recorded in the office of the Clerk of the County of Rensselaer, in Book of Mortgages No. 65, pages 79, 80 and

81, on the 31st of December, 1852, and the several guarantees executed by or on behalf of the remaining parties, accompanying the same.

Now, therefore, the parties hereto, for the purpose of settling the matters involved in said suit, and for the purpose of reforming the contract entered into by, or on behalf of the above-named parties, bearing date the third day of December, 1852, adopt this instead of and in the place of said contract, which is hereby annulled and in consideration of the several covenants and agreements herein contained, to be performed by each of said parties respectively, have covenanted and agreed, and do hereby covenant and agree, each with the other, as follows, to wit:

I. The said party of the first part hereby assent and agree, that the Troy Union Railroad Company may continue, maintain and
287 operate their Railroad in the City of Troy, as now located and constructed, and according to the map and survey thereof, a copy of which survey is hereto annexed, and upon the grades indicated on the profile of the said Railroad, which has been signed by a majority of the former Directors of the Troy Union Railroad Company, and filed in the office of the Clerk of the County of Rensselaer, but nothing in this contract is to interfere with the rights or claims of owners of property adjoining said Road or tracks, to damages, or otherwise, by reason of any change of grade, or to make the said party of the first part liable therefor; nor shall the said party of the first part, in any event, or under any circumstances, be made liable to pay any portion of the expenses whatever, as hereinafter provided to be paid by the said Railroad Companies, parties hereto, for the support or maintenance of the property of the Troy Union Railroad Company, including the rent or toll of the Rensselaer and Saratoga Railroad Company's Bridge, or for any other purposes whatsoever.

II. The party of the first part hereby agree, that The Troy Union Railroad Company may continue to occupy, as heretofore, the land on each side of Sixth street, for a Passenger House, with the course of Sixth street, as at that point changed, so as to pass along either, or both sides of the Passenger House, as may be desired, by The Troy Union Railroad Company.

III. The Troy Union Railroad Company shall raise, by monthly assessments, all the sums necessary to pay its expenses of every kind, including the rent of the Bridge, hereinafter mentioned, and all debts due to others than the party of the first part, incurred since the 1st of July, 1858, and expenses incurred since 1st July, 1858.

288 IV. The Rensselaer and Saratoga Railroad Company, The New York Central Railroad Company, The Hudson River Railroad Company, and The Troy and Boston Railroad Company each covenant and agree to assume and pay to The Troy Union Railroad Company, monthly, one-fourth part of said assessment, on presentation; and it is herein provided, (that if any of said companies *made* default in the payment of any assessment, when so presented for the space of thirty days, The Troy Union Railroad Company, in addition to all other legal remedies, may exclude such defaulting Railroad Company from all use of the Troy Union Railroad, it

tracks, passenger house and other property, until payment thereof); notwithstanding such exclusion proceedings, whether by the modes provided by this contract, or through any legal or equitable proceedings by any, or either of the said parties hereto, said defaulting Road shall continue at all events, and wholly irrespective of its use of the said Troy Union Railroad Company's tracks, passenger house and other property, to pay its assessment during the continuance of this contract.

V. The Rensselaer and Saratoga Railroad Company, The New York Central Railroad Company, The Hudson River Railroad Company, and The Troy and Boston Railroad Company, shall each have equal rights and privileges in the tracks, passenger house, (the separate rooms therein as now occupied) and other property of the Troy Union Railroad Company, and that part of the Rensselaer and Saratoga Railroad Company's Bridge now used for Railroad purposes, without restriction, except such reasonable and uniform rules, regulations, and rent charges for offices, as The Troy Union Rail-
289 road Company may, from time to time, prescribe therefor; and also subject to all reasonable and uniform rules and regulations of the Rensselaer and Saratoga Company, as to their Bridge. The said Bridge is not to be deemed for any purpose a part of the track of the Troy Union Railroad Company, but is to remain in all respects the exclusive property of the Rensselaer and Saratoga Railroad Company.

VI. The Troy Union Railroad Company shall pay to The Rensselaer and Saratoga Railroad Company, the annual rent of Eleven Thousand Five Hundred Dollars, in equal monthly installments, for the use of said Bridge, by all the Railroad Companies who are or may be authorized to use the same under the terms of this contract; and the Bridge shall be continued, kept in good repair, and wholly maintained by the Rensselaer and Saratoga Railroad Company; and it is agreed by and between the Rensselaer and Saratoga Railroad Company, and The Troy Union Railroad Company, that the said Bridge tolls, or rent, shall be credited to the said Rensselaer and Saratoga Railroad Company, by The Troy Union Railroad Company, monthly, on their books, as cash.

VII. The New York Central Railroad Company, and The Hudson River Railroad Company, shall each own one-fourth part, and The Rensselaer and Saratoga Railroad Company, and The Troy and Boston Railroad Company, shall each own one-fifth part of the Railroad, Passenger House, and all other property, rights, and franchises of The Troy Union Railroad Company, subject to the lien of the mortgage thereon to the City of Troy. (One-tenth who owns?)

VIII. And it is further covenanted and agreed by and be-
290 tween the said parties thereto, that the said mortgage heretofore executed by The Troy Union Railroad Company to the said party of the first part, shall be and remain in full force and effect.

It being expressly covenanted and agreed by and between the several parties above named, that nothing herein contained shall be deemed, taken or construed to affect, or in any way or manner im-

pair the validity, force and effect of said mortgage, as a security for the payment of so much of the original principal and interest secured by said mortgage as is assumed and agreed to be paid in settlement of said suit by instruments bearing even date herewith, executed severally by the parties of the third, fourth, fifth, and six parts, respectively, to the party of the first part, but that said mor-gage, shall be taken, deemed and held as a security for that purpose. The party of the first part being at liberty to make such separate contracts with each of said Companies, as to the portion of the debt and interest due from each of them, and to make such arrangements for the payment thereof as the said party of the first part shall deem advisable.

In case of foreclosure of the aforesaid mortgage, on account of any default of the payment of principal or interest, as aforesaid, the proceeds of any sale had in pursuance thereof, shall be applied ratably, in proportion to the several amounts assumed of the original debt, by each of said Railroad Companies, so that each of said Railroad Companies be credited on the respective amount of said debt assumed by it, in proportion to the respective amount of said debt assumed by it, until its respective amount be paid, if sufficient for that purpose, and after payment of its respective amount of said debt, then the
291 balance, if any, of its ratable share shall be paid to it.

And it is further covenanted and agreed, by and between the parties aforesaid, that the said Troy Union Railroad Company shall, at any time, upon the request of the said party of the first part, execute and deliver unto the said party of the first part, a further mortgage upon its capital stock, franchises and property for such amount, not exceeding the whole amount owing from said several Railroad Companies to the said party of the first part, to be held as a further security for the performance of the covenants, conditions and agreements provided to be kept, observed and performed on the part of the said several Railroad Companies to and with the party of the first part.

And it is herein further provided, that if, at any time, default shall be made by any of the said Railroad Companies, parties hereto, in the payment of any installment of principal or interest to the City of Troy, as provided in this settlement, by reason of the insolvency of said defaulting Company, or if upon suit brought therefor against said Company, and upon judgment being recovered therefor by the said City of Troy, and execution issued thereupon being returned unsatisfied, in whole or in part, then and thereupon, and in either case, the right of such defaulting Railroad Company to use said Troy Union Railroad Company's tracks and other property shall cease, and thereupon its title and interest in said Union Railroad shall vest in the City of Troy. And the City of Troy, in addition to all other legal remedies, may apply to the proper Court for an injunction order to restrain such Railroad so in default from using The Troy Union Railroad Company's tracks, passenger
292 house and other property, or for such other relief as the Court may deem just and proper.

Provided, however, if at any time during the continuance of The Troy Union Railroad Company, such defaulting Road, or its suc

cessor, shall assume and pay all the liabilities which then may have accrued, or which may thereafter accrue against such defaulting Company, to the City of Troy, together with interest thereon, or if any Railroad Corporation, parties hereto, which may be reorganized upon its dissolution by its creditors or bond holders, shall assume and pay all liabilities which then may have accrued, or which may thereafter accrue against said Company to the City of Troy, as agreed in this settlement, such defaulting Company, or its successor, or any Company reorganized as aforesaid, shall be restored to all the rights, ownership and privileges in the said Troy Union Railroad, which said defaulting Railroad or reorganized Company had prior to such default.

IX. The Rensselaer and Saratoga Railroad Company, The New York Central Railroad Company, The Hudson River Railroad Company, and The Troy and Boston Railroad Company, may each use the Railroad of The Troy Union Railroad Company for the passage of cars propelled by animals, steam or any mechanical power, at a rate of speed which shall not exceed fifteen miles per hour.

X. The Troy Union Railroad Company shall erect swing bars in the streets at the points where the same are intersected by the track of The Troy Union Railroad Company, and shall close the same at the time of the passage of trains; and if The Troy Union
293 Railroad Company shall fail to construct such swing bars, or to close the same, as above provided, the party of the first part may cause the same to be done, and The Troy Union Railroad Company shall pay to the party of the first part the expense incurred by the party of the first part in constructing, closing and maintaining such swing bars. And such payment shall be the only penalty incurred by any of the parties to this instrument, by reason of the failure of The Troy Union Railroad Company to construct or close such swing bars.

XI. The party of the first part agree, that if the law passed by the Legislature of the State of New York, June 24, 1853, relative to the taxation of the property of the Union Railroad Company in Troy, shall at any time be repealed, the Common Council of the City of Troy shall join in an application to the Legislature of the State of New York, that The Troy Union Railroad Company be exempt from taxation upon an amount exceeding the present amount of its capital stock; and that no tax be imposed upon the Rensselaer and Saratoga Railroad Company on account of the proposed addition to the said Bridge, and if such law shall not be passed, the Common Council of the City of Troy shall refund to The Troy Union Railroad Company an amount equal to the City taxes imposed on The Troy Union Railroad Company, for any valuation exceeding its present capital stock, and shall also refund to The Rensselaer and Saratoga Railroad Company an amount equal to the City taxes imposed on the Rensselaer and Saratoga Railroad Company on account of the said Bridge, for any valuation exceeding the present valuation.

XII. The Rensselaer and Saratoga Railroad Company,
294 The Troy and Boston Railroad Company, and the New York Central Railroad Company do hereby each agree, with The

Hudson River Railroad Company, as lessees of The Troy and Greenbush Railroad Company, to afford to the Hudson River Railroad Company every facility and advantage in all respects, for uniting The Hudson River Railroad with their several Roads, and for transacting business over their several Roads, which may at the same time be afforded to any other Railroad Company running trains from Troy or Albany to the City of New York.

XIII. And The Hudson River Railroad Company, as lessees as aforesaid, hereby agree, with the Rensselaer and Saratoga Railroad Company, The New York Central Railroad Company, and The Troy and Boston Railroad Company, respectively, to afford to each of said Companies, respectively every facility and advantage, in all respects, for uniting their respective Roads with The Troy and Greenbush Railroad, and with the Hudson River Railroad, and for transacting business over such Roads, which may at the same time be afforded by The Hudson River Railroad Company, to any other Company running trains between the Cities of Troy or Albany, and any place north or west of either of those Cities.

XIV. The stock of The Troy Union Railroad Company shall belong one-fourth part each to The New York Central Railroad, The Hudson River Railroad, The Rensselaer and Saratoga Railroad and the Troy and Boston Railroad Companies. And The Troy Union Railroad Company shall issue to each of said four Roads full scrip for the amount of capital stock now subscribed by each of them, subject to the mortgage aforesaid. Whenever another Road
295 shall, by the terms of this contract, obtain an ownership in The Troy Union Railroad Company, it shall be entitled to one-fifth of said capital stock; and each of said four above named Roads shall transfer such portion of its scrip to said new Road as to make the five Roads each the owner of one-fifth part of said capital stock, and in like manner for any additional Road."

The balance of the agreement is the same as was heretofore put in without interlineations or underscoring.

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors at a meeting held June 10, 1863:

"Resolved, that the treasurer make his drafts on the 4 Rail Road Companies owning the stock of this company for $7,477.75, in the aggregate, or $1,869.44 each. (Including 4 drafts of $1,000 each drawn on said Companies on the 4th inst.), to pay the balance due Harris Briggs & Co. for Roof of Union Depot."

Mr. Carr: Also from the proceedings at the same meeting:

"Resolved, that the treasurer be directed to procure a further insurance upon the Union Depot of $10,000."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors at a meeting held July 9, 1863:

"Resolved, that the President be authorized to direct and execute a Deed to Henry A. Clum now presented to this Board, with the assent of John L. Thompson to be given therein, of a certain lot of land, situated between Liberty street and Washington street and east of Fifth street for the purposes and objects specified in said deed and affix the corporate seal to the same."

296 Mr. Carr: I offer in evidence the following from the proceedings of the Directors at a meeting held August 12, 1863:

"Resolved, that the change of Policies of insurance on the Depot ($30,000) as stated to the board by Mr. Weed, at the rate of 60c. be approved, and that the outstanding policies ($10,000) be renewed at the same rate (60c.), when they expire."

Mr. Carr: I offer in evidence the following from the proceedings of the Directors at a meeting held September 9, 1863:

"Resolved, that the subject of the assessment for the extension of North Fourth street and for the building of a sewer in Jacob street be referred to the executive committee with power."

Mr. Carr: I offer in evidence the following from the proceedings of the Directors at a meeting held October 14, 1863:

"On motion of Mr. Vail, resolved, that the Treasurer be authorized and directed to draw upon each of the 4 companies to the amount of $500 for each to pay $2,000 expenses of finishing the passenger house roof."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors at a meeting held November 11, 1863:

"On motion of Mr. Tracy the following preamble and Resolution was adopted:

Whereas the Albany & Vermont R. R. Co. contemplate constructing a Branch Rail Road to connect the Rail Road of said Co. in West Troy with the track on Green Island of the Rensselaer & Saratoga Rail Road Co. leading across the Hudson River Bridge at
297 Troy and said last named Co. contemplate leasing and operating said Branch Rail Road in connection with the Rail Road now operated by said last named Company.

Now Resolved, that said Rensselaer & Saratoga Rail Road Company in case said Branch Rail Road shall be constructed as aforesaid and leased and operated by said last named Company, has and shall continue to have the right to use the tracks, Depot, etc., of the Troy Union Rail Road Company as well for Engines, Cars to run over said Branch Rail Road and the rest of the Rail Road of said Albany & Vermont Rail Road Co. as for Engines, Cars to run over the Rail Road of said Rensselaer & Saratoga Rail Road Company and without any additional charge therefor or on account thereof. This resolution is to be in force so long as the Rensselaer & Saratoga Rail Road Co. shall continue to be the Lessors and Operators of that part of the Albany & Vermont Rail Road between Albany and Waterford Junction and of the branch aforesaid, but this resolution is not to extend to any Cars or Engines run over any Road constructed or to be constructed on the east side of Hudson River southerly of the Saratoga & Whitehall Rail Road.

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors at a meeting held January 13, 1864:

"Resolved that the acting superintendent be authorized to contract for the timber necessary to rebuild the bridges over the road at Fifth street and Hutton street."

Mr. Carr: I offer in evidence the following from the proceedings of the Directors at a meeting held April 13, 1864:

"Resolved, that from and after this date the several roads owning the stock of the Troy Union R. R. Company be required to
298 make all repairs and alterations in the rooms occupied by them respectively at their own expense."

Mr. Carr: I offer in evidence the following from the proceedings of the Directors at a meeting held October 12, 1864:

"Resolved, that the amount of insurance on the passenger house of this company be increased $10,000 at the best rate to be obtained."

Mr. Carr: I offer in evidence the following from the proceedings of the Directors at a meeting held December 31, 1864:

"The Committee to whom was referred the Rules and Regulations for Revision reported the same with amendments, and the several amendments were adopted by the Board. And the following Rules and Regulations were then unanimously adopted.

Mr. Carr: I offer in evidence those regulations appearing on pages 59 and 60, minute book.

The same were received in evidence and the following is a copy of the same:

"Rules and Regulations of the Troy Union Rail Road Company.

Each of the Companies constituting the Troy Union Rail Road shall, in consideration of the conditions imposed by the two Articles of Agreement in relation to the same, have the use of the Passenger House and Stations, and of the tracks, branches, sidings, turnouts, turntable and other structures under the appropriations and
299 Rules and Regulations of the Troy Union Rail Road, with light for general purposes, and water for engines and also such room as can be spared to stand two extra cars when not in use, and for piling and storing wood for engines when necessary. Also the exclusive use and occupation of a suite of passenger rooms including baggage rooms and ticket offices, and in the second story a set of rooms for offices, as appropriated by a resolution of the Board of Directors; the Union Company having a supervision over the same so far as necessary for the proper police regulations, and the safety of the building.

The trains, engines and cars of the several Roads when in the Union Depot or its vicinity, or on the track of this Company, shall at all times be under the control of, and shall occupy such tracks, at such times and in such manner as the Superintendent, Station Master or the person for the time being in charge of the Depot shall direct; the two main tracks through the Depot usually used for the passage of freight trains shall not be unnecessarily occupied by cars or engines. No engine shall stand in the Union Depot any longer than is necessary to detach it from trains arriving, or to connect it with trains departing. Trains, engines and cars when on the tracks and roadway of the Union Rail Road shall strictly conform to the regulations of the same.

Freight Trains must keep off the time of Passenger Trains, and must not run less than five minutes behind them, and a longer time when directed to do so by the Station Master.

Switch and Flagman will exhibit a white flag or lantern when the track is clear; but when a red flag or lantern is displayed, trains must stop immediately.

300 The officers, agents or servants of the several companies shall, when on the tracks or premises of this Company, conform to and be subject to its rules, and the several companies shall, and the Union Company may prohibit such person or persons from being employed on their premises who shall neglect or refuse to obey such rules.

No handbills, placards, or other printed matter shall be posted in or on the outside of the Union Depot, except those relating to Rail Roads.

No runners, or persons whose business it is to solicit passengers, shall be allowed on the premises of this Company while in the prosecution of such business, and no Company forming a part of the Troy Union Rail Road Company shall employ such persons or allow them on their cars while in the performance of such duties, while on the tracks or premises of this Company.

All employees of the several Companies, when on duty in the Passenger House, or Station, or on the premises of the Company, shall wear badges if required by the Superintendent to do so, showing their occupation, and the Road to which they are attached.

Each Company, shall afford every aid, assistance and encouragement for maintaining order and discipline, and they shall see that their employees aid the officers of the Union Road in enforcing the rules and regulations, and that their ticket sellers be required to furnish and sell such tickets to passengers, so that the rule for passengers to procure tickets, before entering the cars can be properly and rightfully enforced.

No Company or individual shall be allowed to send any team, carriage, wagon, cart, or other vehicle other than the baggage trucks used by the men for trucking or taking passengers' baggage, or freight, within the Passenger House.

301 All carriages, hacks, cabs, omnibuses, or other vehicles bringing or taking passengers or their baggage to or from the several offices or trains must in all cases occupy the yard on the west side of the Passenger House, but must not stand inside of the row of Posts set in the ground, except when putting down or immediately taking up Passengers and their baggage. And no driver of such vehicle, or other person will be allowed to enter the Passenger Rooms or main building, or its passages, to solicit passengers.

Porters of Hotels and Express beggagemen with their badges, showing their occupation and the House or Company to which they belong will have a station assigned them by the Superintendent, Station Master, or the person for the time being in charge of the Depot, and they must not leave the same except to present checks for baggage at the baggage rooms or places appointed for the distribution of baggage, and no such person must cross any of the railroad tracks upon the arrival of Trains without the consent of the Station Master.

No Hackman, Porter, Express Baggageman, Runner, or other per-

son in the employ of any of the Companies using the Depot, will be allowed to smoke in the Union Depot.

All persons are positively forbidden to walk or stand upon the tracks of this Company, except when necessary in order to leave or take the Cars, or in taking baggage or freight to or from the same. No children except when accompanied by their parents or friends will be allowed to enter the Union Depot.

The Superintendent, Station Master, or the person for the
302 time, being in charge of the Depot, is directed to remove or cause to be removed, all persons from the premises of the Company who shall refuse to obey or follow the rules and regulations of this Company.

No tickets shall be sold in the ticket offices in the Passenger House or station, for competing lines or roads other than the roads forming the Union Company, unless by consent of the Troy Union Railroad Company, and no agent or employees of such competing lines or roads, as such, shall be permitted to enter the Passenger House or station, or post bills, or solicit passengers, on the premises of the Troy Union Railroad, without the consent of the Troy Union Railroad Company. Stationmen shall be appointed, one of which shall be designated by the Superintendent as Station Master, and one or more shall be on duty at all times, day and night. It shall be their duty to see that the station is kept in good order, that passengers are properly directed on the arrival and departure of the trains, and that they are not annoyed and misdirected by unauthorized persons, and the Superintendent or Station Master must see that those men shall be duly detailed for duty so as to have the greater number on duty when the greatest number of passengers or amount of business is to be accommodated, and that they act with strict impartiality, and perform such duties as may be required.

General Regulations for Employees.

No smoking will be allowed by any man when on duty, or in the buildings of the Company.

Each employee of the Company shall devote himself to the Company's service, and he must serve when and wherever he is re-
303 quired, including Sundays, if necessary, he being allowed for any extra work at his usual daily rate of compensation (all monthly men being excepted from such extra allowance), and he must promptly obey all orders he may receive from the person in authority over him, and when he is at a loss how to act he must apply to that person for instructions. No person is allowed to receive any gratuity from the public on pain of dismissal, and the wages or compensation paid shall cover all risks incurred, or liability to accident from any cause on the road.

Each man shall be liable for any damage or loss occasioned by his negligence, and the Company shall have the right to deduct from the pay such sums as may be fixed as fines for neglect of duty, and every man in the employ of the Company shall hold his situation subject to this condition.

The use of intoxicating drinks on the road or about the premises of the Company is strictly forbidden, and no one will be employed or continued in employment who is known to be in the habit of drinking intoxicating liquor.

No instance of intoxication while on duty will ever be overlooked, and the offender shall be dismissed. Any case of rudeness, incivility, or the use of profane or improper lan guage, while on duty, will be followed by fine or dismissal.

In cases of accident or emergencies requiring such exercise of authority, the Conductor or Engineman of a Train or Engine is empowered to summon any person or persons in the employ of the Company by night or day to render assistance to a disabled Train or Engine, and any person neglecting or refusing to obey such summons, shall be discharged.

304 It shall be the duty of all to report all violations of the regulations of the road which may come under their observation, and to aid the Superintendent in their enforcement.

Persons who disapprove of these regulations and are not disposed to obey, or aid in their enforcement, are requested not to remain in the service of the company.

By order of the Board of Directors.

ELIAS PLUM,
CORNELIUS L. TRACY,
D. THOMAS VAIL,
Executive Committee.
GEORGE H. CRAMER,
DANIEL ROBINSON."

Mr. Carr: I offer in evidence the following from the proceedings of the directors at a meeting held July 12, 1865:

"Resolved, that in view of the fact that it is threatened to cut through the east wall of the tunnel of this Company about 100 feet north of Congress street for the purpose of a sewer—the superintendent be directed to take all necessary steps, legal or otherwise to prevent the said construction."

Mr. Carr: I offer in evidence the following from the proceedings of the directors at a meeting held November 9, 1865:

"A Petition was laid before the Board for the rent of the News Room in the Passenger House, by persons interested in improving the character of the Light literature sold at R. R. Stations, which was referred to the Executive Committee with Power.

305 The Application of the Rensselaer & Saratoga R. R. *R.* Co. for permission to enlarge their offices in the Depot, was referred to the Executive Committee to consider and report thereon.

Mr. Carr: I offer in evidence the following from the proceedings of the directors at a meeting held October 24, 1867.

"On motion, Resolved, that the Treasurer be authorized and directed to draw at sight upon each of the 4 Companies holding the stock of this company for ¼ of the sum of $3,000, the amount agreed to be paid to D. L. Seymour Atty. in settlement of the suit of Geo. Vail and the suit of James Wager and ors. against this company in full

for damages and loss in pursuance of the resolution of this Board adopted at its meeting of Sept. 13, 1867.

Resolved, that the Treasurer be authorized and directed to draw at sight upon each of the 4 companies holding the stock of this company for ¼ of an amount sufficient to pay and satisfy a judgment of $2,617.52 against this company in the Dunham suit after turning over and applying the two city bonds held by this company amounting to $2180 on said judgment—and pay the same to J. A. Millard, the atty. for the plaintiff in said suit."

Mr. Carr: I offer in evidence the following from the proceedings of the directors at a meeting held November 15, 1869:

"On motion, Resolved, that the Refreshment Rooms in the Depot lately occupied by Mrs. Leckum be rented to Geo. Holeur at the monthly rent of $30 and that the secretary prepare a lease of the same to contain the same terms and conditions as the lease to F. Leckum and also further that Holeur give his personal at-
306 tention to the management of said rooms and that the president be authorized to execute and affix the corporate seal to the same.

On motion, Resolved, that the subject of alterations and improvements of the Refreshment Room in the Depot be referred to the executive committee with power."

Mr. Carr: I offer in evidence the following from the proceedings of the directors at a meeting held April 15, 1870:

"Resolved, that the matter of the alteration of the Rooms in the Depot and the raising of the central Tower and providing Refreshment and News Rooms in the Depot and the apportionment of expense of the same be referred to the Executive Committee with power."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors held November 21, 1870:

"Resolved, that the Executive Committee be requested to meet a Committee of the Common Council on the subject of the bridge in First street and report to this Board.

Resolved, that the matter of the letting the refreshment rooms and Newsrooms in Depot be referred to the Executive Committee with power.

A Communication from the Rensselaer & Saratoga R. R. Co. dated June 18, 1870, demanding of this company payment in gold for rent of bridge after that date in case the decision of the U. S. Court lately made shall not be reversed, was read and ordered on file.

Resolved, that the meetings of this Board be held hereafter at the office of the Superintendent in the Depot."

Mr. Carr: I offer in evidence the following from the pro-
307 ceedings of the directors held May 18, 1871:

"The following resolution of the Common Council passed at their last meeting was read and on motion of the Mayor was referred to the Executive Committee:

The following is a copy of the resolution:

Resolved, that the Union Railroad Company be requested to change the location of their roadway temporarily where it crosses the

Poestenkill in First street, and remove the present bridge af that point, so that the contractors may go on with the construction of the new bridge at the point aforesaid ordered by the Common Council, City Attorney and City Engineer."

Mr. Carr: I offer in evidence the following from the proceedings of the directors at a meeting held December 13, 1871:

"On motion, resolved, that this Board do hereby ratify and confirm the execution of the contract between the Troy Union R. R. Co. and the city of Troy dated Oct. 30, 1871, in relation to the First street bridge across the Poestenkill which was executed by the signature of Mr. Geo. H. Warren as President and by affixing the seal of said Troy Union R. R. Company."

Mr. Carr: I offer in evidence the following from the proceedings of the Directors at a meeting held May 8, 1872:

"Resolved, that the matter of Bridge across Poestenkill be referred to the attorneys of this Company and the City to ascertain the legal rights of each and report to Executive Committee who are clothed with full power to take such steps as will cause the immediate construction of same."

Mr. Carr: Also the following:

"The account of Troy & Boston R. R. for alteration of
308 Rooms in 1870 at request of N. Y. C. & H. R. R. R. Co. was presented by Executive Committee who made the assessment under resolutions of April 15, 1870, as follows:

$3,000.00	upon N. Y. C. & H. R. R. R. Co.
477.27	upon Troy & Boston R. R. Co.
1,000.00	upon Troy Union R. R. Co.
$4,477.27	

Resolved, that the apportionment made by the Executive Committee and reported to the Board on above account is approved and the Treasurer is authorized to assess and collect the same of the parties so assessed."

Mr. Carr: I offer in evidence the following from the proceedings of the Directors at a meeting held November 6, 1872:

"On motion of C. L. Tracy the President was authorized to sign the lease presented to the Board of News Room to Northern News Co. and to affix the Corporate Seal thereto.

On motion of C. L. Tracy the land occupied by Bolton & Anthony was authorized to be leased to them at an annual rent of not less than $20.

On motion of C. L. Tracy the portion of land occupied by John Blass was authorized to be leased to him at 6c. per annum."

Mr. Carr: I offer in evidence the following from the proceedings of the directors at a meeting held January 8, 1873:

"On motion it was resolved, that a lease be given to John O'Brien for property corner Jefferson and 2d streets for one year at $250 per annum.

for damages and loss in pursuance of the resolution of this Board adopted at its meeting of Sept. 13, 1867.

Resolved, that the Treasurer be authorized and directed to draw at sight upon each of the 4 companies holding the stock of this company for ¼ of an amount sufficient to pay and satisfy a judgment of $2,617.52 against this company in the Dunham suit after turning over and applying the two city bonds held by this company amounting to $2180 on said judgment—and pay the same to J. A. Millard, the atty. for the plaintiff in said suit."

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"On motion, Resolved, that the Refreshment Rooms in the Depot lately occupied by Mrs. Leckum be rented to Geo. Holeur at the monthly rent of $30 and that the secretary prepare a lease of the same to contain the same terms and conditions as the lease to F. Leckum and also further that Holeur give his personal at-
306 tention to the management of said rooms and that the president be authorized to execute and affix the corporate seal to the same.

On motion, Resolved, that the subject of alterations and improvements of the Refreshment Room in the Depot be referred to the executive committee with power."

Mr. Carr: I offer in evidence the following from the proceedings of the directors at a meeting held April 15, 1870:

"Resolved, that the matter of the alteration of the Rooms in the Depot and the raising of the central Tower and providing Refreshment and News Rooms in the Depot and the apportionment of expense of the same be referred to the Executive Committee with power."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors held November 21, 1870:

"Resolved, that the Executive Committee be requested to meet a Committee of the Common Council on the subject of the bridge in First street and report to this Board.

Resolved, that the matter of the letting the refreshment rooms and Newsrooms in Depot be referred to the Executive Committee with power.

A Communication from the Rensselaer & Saratoga R. R. Co. dated June 18, 1870, demanding of this company payment in gold for rent of bridge after that date in case the decision of the U. S. Court lately made shall not be reversed, was read and ordered on file.

Resolved, that the meetings of this Board be held hereafter at the office of the Superintendent in the Depot."

Mr. Carr: I offer in evidence the following from the pro-
307 ceedings of the directors held May 18, 1871:

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The following is a copy of the resolution:

Resolved, that the Union Railroad Company be requested to change the location of their roadway temporarily where it crosses the

Poestenkill in First street, and remove the present bridge af that point, so that the contractors may go on with the construction of the new bridge at the point aforesaid ordered by the Common Council, City Attorney and City Engineer."

Mr. Carr: I offer in evidence the following from the proceedings of the directors at a meeting held December 13, 1871:

"On motion, resolved, that this Board do hereby ratify and confirm the execution of the contract between the Troy Union R. R. Co. and the city of Troy dated Oct. 30, 1871, in relation to the First street bridge across the Poestenkill which was executed by the signature of Mr. Geo. H. Warren as President and by affixing the seal of said Troy Union R. R. Company."

Mr. Carr: I offer in evidence the following from the proceedings of the Directors at a meeting held May 8, 1872:

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477.27	upon Troy & Boston R. R. Co.
1,000.00	upon Troy Union R. R. Co.
$4,477.27	

Resolved, that the apportionment made by the Executive Committee and reported to the Board on above account is approved and the Treasurer is authorized to assess and collect the same of the parties so assessed."

Mr. Carr: I offer in evidence the following from the proceedings of the Directors at a meeting held November 6, 1872:

"On motion of C. L. Tracy the President was authorized to sign the lease presented to the Board of News Room to Northern News Co. and to affix the Corporate Seal thereto.

On motion of C. L. Tracy the land occupied by Bolton & Anthony was authorized to be leased to them at an annual rent of not less than $20.

On motion of C. L. Tracy the portion of land occupied by John Blass was authorized to be leased to him at 6c. per annum."

Mr. Carr: I offer in evidence the following from the proceedings of the directors at a meeting held January 8, 1873:

"On motion it was resolved, that a lease be given to John O'Brien for property corner Jefferson and 2d streets for one year at $250 per annum.

Resolved, that Messrs. Baker and Robinson are authorized
309 to lease eating rooms to P. W. Gould on such terms as they shall deem for interest of the company and that the President is authorized to sign such lease and affix Corporate seal of the Company thereto."

Mr. Carr: I offer in evidence the following from the proceedings of the Directors at a meeting held January 14, 1874:

"The Committee appointed to report a plan for the better regulation of the Depot. Reported as follows:"

Then I offer in evidence the rules and regulations that were adopted by the committee that are attached to that report.

The same were received in evidence and the following is a copy.

"Troy Union Railroad Rules and Regulations.

The following Rules and Regulations will hereafter be enforced in Union Depot.

The entrance for passengers to Union Depot will be from Union street. Passengers will leave the building via the north and south gates.

The station master has charge of the building, subject to the construction of the Managing Director, and will be held strictly responsible for the care of the same. He will see that the day and night watchmen and policemen are at their respective places during the hours assigned them, and that they perform their duties in a thorough and faithful manner.

The policemen of the Union R. R. Co. will be required to patrol the building and preserve order on the floor and in the passenger rooms. It shall be a part of their duty to note, and promptly
310 report to the Managing Director, any incivility or inattention on the part of a Railroad Employee towards a passenger. They must be familiar with the time of arrival and departure of trains, and give information in reference to them as they may have occasion.

The gong, centrally located on the west side of the building, will be used as a signal for the porter, who will transfer baggage from one baggage room to another, without charge.

Train and enginemen of the several Roads having privileges in Union Depot will be subject to the directions of the Station Master in locating their trains and engines.

The express companies will be expected to make their transfers of freight, as far as practicable, on the east side of the building, and will not, unless absolutely necessary, use their trucks west of the N. Y. C. track.

Hotel porters and runners, hackmen, draymen and city expressmen will not be allowed in the building or passenger rooms for the purpose of soliciting passengers or baggage.

Hacks and express baggage, or city express wagons must not stand nearer than twelve feet of the outer edge of depot plaform on Union street, excepting when receiving or delivering passengers or baggage.

City baggage will be received and delivered only at the Union street entrances.

Hand baggage wagons and wheelbarrows will not be allowed inside the building.

Trams of any kind will not be allowed inside the building.

Baggage, express and mail trucks must be drawn instead of
311 pushed in the building, and when not in use, must be kept well out of the passage ways.

Employees of the Union R. R. Co., or of any company occupying the depot, will not be allowed to use their influence in any manner, either in favor of or against, any hotel or restaurant.

The use of intoxicating drinks, by employees while on duty, is forbidden.

Smoking on the part of Employees of the Union R. R. Co., also all trainmen of the several roads having privileges in Union Depot, is forbidden while on duty, either on the floor or in the passenger rooms.

All employees of the company located in Union depot are expected to be constantly watchful of the safety of passengers and their baggage, and are instructed to aid passengers in passing from one train to another and in securing and transferring their baggage; and they are reminded that no excuse will be received for the uncivil or disrespectful treatment of any passenger.

Badges must be worn by all employees of the company while on duty in Union depot.

DANIEL ROBINSON,
Managing Director."

Mr. Carr: I offer in evidence the following from the proceedings of the directors at a meeting held January 15, 1874:

"On motion it was resolved that the foregoing report of Committee on Rlues and Regulations be accepted and adopted and that it go into effect February 1st, 1874 the ayes and noes being called. The motion was adopted by the following ayes Geo. B. Warren, E. S. Morgan and D. T. Vail. Tracy voting no."

Mr. Carr: I offer in evidence the following from the pro-
312 ceedings of the Board of Directors at a meeting held February 11, 1874:

"Baker and Robinson reported that they had rented the eating rooms for three years to Gould at $50 per annum first year, $60 per annum second year, and $70 per annum third year, whereupon it was resolved that the president execute a lease for the same and that the corporate seal be thereto affixed."

Mr. Carr: I offer in evidence the following from the proceedings of the directors at a meeting held October 14, 1874:

"On motion of J. H. Willard the managing director was directed not to pay the assessment made Octo[illegible]er 3, 1874 for improvement at Hutton street the same being considered unjust and illegal and is instructed to take the necessary legal steps to defend the collection of said assessment."

Mr. Carr: I offer in evidence the following from the proceedings of the directors at a meeting held March 13, 1876:

"On motion of H. R. Pierson the president was authorized to sign

a lease of the dining rooms and tower to P. W. Gould for the term of five years at a rent of nine hundred dollars for the first year and one thousand dollars per annum for four years payable monthly."

Mr. Carr: I offer in evidence the following from the proceedings of the directors at a meeting held January 3, 1880:

"Mr. Robinson on the part of the Troy & Boston Railroad stated that the Troy Union Railroad had official notice that the Delaware & Hudson Canal Company intended to run the cars of the Boston Hoosic Tunnel & Western Road over the tracks of the Troy
313 Union R. R. into and out of the passenger depot of the same company and in direct opposition to the Troy & Boston Road that being a rival corporation, it was in violation of the rules and regulations of the Troy Union Railroad, and as he believed in violation of the contract entered into between the companies owning the same and also in violation of the contract with the city of Troy and read to the board the following letter:

Troy, N. Y., December 26, 1875.

Daniel Robinson, Esq., Manager, Troy Union R. R.

SIRS: In reply to your favor of the 22nd. I beg to state that while this company does not recognize your right to question us as to the class of cars we take into the Union depot we intend hereafter as we have in the past to run our trains into the Union depot without regard to the class of cars of which such trains may be composed.

Yours very truly,

THEODORE VOORHEES, *Supt.*

The following preamble and resolution was then offered by Worcester.

Whereas the Boston Hoosic Tunnel & Western Railroad is competitive with and antagonistic to the Troy and Boston Railroad one of the parties in the Troy union Railroad for business between Troy and Boston, therefore.

Resolved that under the spirit and provisions of the contract between the city of Troy and the New York Central the Hudson River The Rensselaer and Saratoga and the Troy & Boston Railroad- dated July 1st, 1858 commonly called the reformed contract as to
314 the Troy Union Railroad and under the rules and regulations adopted by the Troy Union Railroad Company under the provisions of such contract the Delaware and Hudson Canal Company operating the Rensselaer and Saratoga line as lessees thereof has no right to run upon or over the tracks of the Troy Union Railroad or into or out of the Troy Union depot any cars of the Boston Hoosic Tunnel & Western Railroad Co., or its eastern connections or cars run over them or to sell at its ticket office in said depot any tickets by the Boston Hoosic Tunnel & Western line.

Resolved, that this company protests against any attempt on the part of the Delaware and Hudson Canal Co. to do either of the acts just named and that in the event of any such attempt being made the manager of the Troy Union Railroad be and he is hereby authorized

to take such steps legal or otherwise as may be in his opinion necessary to protect the Troy Union Railroad Co. in the premises.

The ayes and noes being called for, the resolutions were passed by the following vote:

Ayes, Toucey, Vail, Vanderbilt, Tillinghast, Robinson, Willard, Fisher, Worcester, ayes 8.

Noes, Baker, Voorhees, Marcy, noes 3.

Mr. Carr: I offer in evidence the following from the proceedings of the directors at a meeting held November 14, 1881:

"The manager presented a form of an agreement to lease to the Troy Railroad Young Men's Christian Association the land adjoining the south-east corner of the depot when, on motion, the fol-owing resolution was passed:

315 Resolved, That the managing director be and he is hereby authorized and empowered to affix the corporate seal of the company to a lease to the Troy Railroad Young Men's Christian Association, when incorporated, of land adjoining the southeast corner of the Union Depot building on the terms and provisions of the draft of lease now submitted to this board (with such alterations) as shall be approved by the Executive Committee and when the same shall be approved by each of the companies, and also subscribe his name thereto a such managing director and deliver such lease on behalf of this company.

Manager presented a copy of lease of dining room to H. C. Willard when on motion the following resolution was passed:

Resolved, That the manager be and he is hereby authorized to sign the same and affix the corporate seal thereto.

On motion, the following resolution was passed:

Resolved, That the managing director be and he is hereby authorized and empowered to affix the corporate seal of the company to leases of land of the company to the adjoining owners where they have encroached upon such land for such time and on such terms as the executive committee shall approve from time to time in order to properly protect the rights of this company therein and also to subscribe his name thereto as such managing director, and to deliver such leases on behalf of this company."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors at a meeting held November 12, 1883:

"An application was made by the National Express Com-
316 pany to lease for a term of years the vacant lot east side of the depot on Fulton street to the turn table with the privilege of erecting a brick building thereon; the matter was referred to the Executive Committee with power."

Mr. Carr: I offer in evidence the following from the proceedings of the directors at a meeting held November 8, 1886:

"On motion, the matter of constructing iron bridges across the Union Road for connecting the street over the same be referred to managing director.

Resolved, That the managing director be authorized to have plans and estimates prepared of such alterations and improvements found necessary to be made to the Troy Union depot, including among

other things a plan for the removal of the pillars supporting the ends of the building and report to the board.

Resolved, That on making a final settlement with Messrs. N. B. Warren & Brother the attorney of this company be authorized to make the following terms, viz.: the Warrens to be paid $300 per lot and that the Troy Union R. R. will build a retaining wall in front of the property.

Resolved, That provided the attorney makes a settlement with Messrs. N. B. Warren & Bros. the managing director be and is hereby authorized to prepare plans and specifications and obtain bids for the erection of a retaining wall in front of the Warren property and submit the same to this board.

Mr. Carr: I offer in evidence the following from the proceedings of the board of directors at a meeting held February 14, 1887:

"Regular meeting, February 14th, 1887.

Present: Messrs. Robinson, Weed, Parsons, Young, March, Baker, Priest, Bissell, Van Arsdale Voorhees.

317 Mr. Marcy reported action taken in regard to accounts of treasurer.

On motion Resolved:

That the Executive Committee having from month to month examined and approved the accounts of the treasurer, the same be and they are hereby approved and accepted by this board up to February 1st, 1887.

Mr. E. D. Worcester having transferred the one share of stock standing in his name to F. A. Harrington—on motion of Mr. Voorhees, Mr. Harrington was declared a director of this board.

A report was read from W. Katte, Esq., Chief Engr. N. Y. C. & H. R. R. R., submitting bids for the erection of a retaining wall in front of the Warren property, as follows:

Christopher Keenan	$16,252.00
Boller & McGraw	16,396.00
McEncroe & Callinan	16,535.85
Malone & McKennan	16,851.67
P. H. Buckley	18,392.94
Nichols & Magill	19,170.54
William Turner	19,560.25
E. Hagler	20,056.90

On motion of Mr. Young, the bid of Boller & McGraw was ordered to be accepted.

The above figures are based on the estimate of the Engineer as to quantities of material required, the bids having been made per cubic yard, etc. The bid of Boller & McGraw is as follows:

Masonry per cu. yd	$5.50
Concrete per cu. yd	5.75
(1½ bbls. cement per yard.)	

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Earth excavation per cu. yd	.35

Hemlock timber in foundations, B. M..... 19.00
Iron bolts if required, per lb..... .06

A report of Mr. Katte was read on the present condition of the roof of the station and the Sixth street tunnel. On motion, it was resolved: That the manager be authorized to repair the Sixth street tunnel after the plans proposed by Mr. Katte, using iron centres and filling in with Portland cement below."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors at a meeting held November 14, 1887:

"Resolved: That the agreement made between Nathan B. Warren, Stephen E. Warren and George Henry Warren and wife, and the President of this Company, whereby the former convey to the Troy Union Railroad Company two certain parcels of land in the City of Troy, on either side of Pine Street and known as lots, or parts of lots 5, 6, 7, 8, 9 and 11, in exchange for the following: 'All the lands heretofore acquired by this Company which lie easterly of the great retaining wall built in 1887, on its lands in the City of Troy, south of Ferry Street and north of Washington Street, be approved; that the President be authorized to execute a deed under the seal of this Company, conveying the last named parcel to the Messrs. Warren, in accordance with said agreement; and that the Treasurer be authorized to pay the sum of $1800, as in said agreement provided to be paid to said Messrs. Warren in said exchange."

Mr. Carr: I offer in evidence the following from the pro-
319 ceedings of the Board of Directors at a meeting held January 5, 1889, beginning with line 9 on page 552 and ending with line 13 on page 555:

"Resolved: That the Managing Director be and he is hereby authorized and empowered to affix the Corporate seal of the Company to a lease to the Edison Light and Power Company of Troy, N. Y., of land adjoining the Union Depot building on the terms and provisions of the draft of lease now submitted to the Board and also to subscribe his name thereto as such Managing Director and deliver such lease on behalf of the Company.

The following is a copy of the lease: . .

This agreement made this twenty-fifth day of January, 1889, by and between The Troy Union Railroad Company, party of the first part, and the Edison Light and Power Company of Troy, N. Y., party of the second part:

Witnesseth: That the said party of the first part in consideration of the rents and covenants hereinafter expressed, hereby leases unto the party of the second part, its successors or assigns, the following described premises, to wit: All that certain lot, piece or parcel of land situate in the City of Troy, in the County of Rensselaer, and State of New York, bounded and described as follows, to wit: Beginning at a point on Fulton Street at the northeast corner of the train house or car shed of the party of the first part, running thence easterly along the line of said street seventy-five (75) feet to an alley; thence southerly on west line of said alley one hundred (100) feet; thence westerly fifty-five (55) feet to the wall of the train house aforesaid;

and thence northerly along the wall of said train house to the
320 place of beginning, containing sixty-five hundred square feet, be the same more or less; for the term of ten years from and after the first day of January, 1888, upon the following terms and conditions, to wit:

The said party of the second part hereby covenants and agrees to pay to the said party of the first part, for the use of said premises the annual rent of One dollar, payable on the first day of January in each and every year during the continuance of this lease or any renewal or renewals thereof excepting only as hereinafter provided.

And it is further agreed by and between the respective parties hereto, that upon the expiration of the said term of ten years this lease shall, at the option of the said party of the second part, be renewed for a further period of ten years on the same terms and conditions and at the same rental as are herein provided for the period beginning on the first day of January, 1888.

Provided, however, in case of lighting and heating or either of them as provided in a certain Indenture dated November twenty-eight, 1887, between the Troy Union Railroad Company, of Troy, N. Y., and Howard L. Browning of Albany, or any renewal thereof, shall cease and determine; it is hereby understood and agreed that this lease and any renewal thereof shall not in consequence thereof cease and determine, but the annual rental to be paid for the said premises from and after the determination of said contract for lighting and for and during the unexpired period of this lease and the said renewal or continuance thereof by the said party of the second part, its successors or assigns, shall be the subject of a new agreement between the said parties, their successors or assigns. And if the
said parties cannot agree as to the amount of such annual
321 rental, it shall be ascertained and determined by arbitration in the usual way; that is to say, the parties shall refer the matter to a fit and impartial person to be mutually agreed upon by them, and if they cannot so agree, each of the said parties shall select a fit and impartial person and the two so selected, if they cannot agree upon the amount of such rental shall choose a third, and the decision of such arbitrator or arbitrators or a majority of them shall be conclusive and binding upon both the parties.

It is also understood and agreed by and between the parties hereto, that the lease and agreement for the renewal thereof affects and relates only to the land or ground above described and that the party of the first part, its successors or assigns, is to acquire no right, title or claim to the building erected or to be erected or improvements made thereon during the continuance of this lease or extension or renewal thereof by the party of the second part, its successors or assigns, but that the said buildings and improvements are to be and remain the property of the said party of the second part."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors at a meeting held November 18, 1897:

"The Manager brought to the attention of the Board the conditions of what is known as the Sixth Street tunnel and submitted written reports, made by Mr. R. H. Brown, Chief Engineer of the D. & H.

Canal Co., F. O. Melcher, Chief Engineer of the Fitchburg Railroad, and also a letter from Colonel Walter Katte, Chief Engineer of the N. Y. C. & H. R. *R.* Railroad, accompanied by reports to him, signed by A. A. Schenck, Senior Assistant Engineer, and W. J. Wilgus, Resident Engineer; also an extended report, with dia-
322 grams and maps, submitted by A. H. Sutermeister, Roadmaster in charge. All of these reports point to the necessity for immediate repairs being made, looking to the strengthening of the structure. After some discussion, and examination of the reports and maps, it was moved by Mr. Edgar Van Etten, and seconded by Mr. E. D. Codman that the three Chief Engineers mentioned above be requested to meet in Troy, and make a joint inspection and full report on the condition of the tunnel without delay."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors of a meeting held July 21, 1901:

"The following resolution, offered by Mr. H. G. Young, Vice President of the Delaware and Hudson Company, and seconded by Mr. T. A. McKinnon, Vice President of the Boston and Maine Railroad Company, was unanimously adopted:

Resolved, that President Newman be and hereby is empowered and instructed to proceed with the erection of a Union Passenger Station and other improvements at Troy, as per plans and estimates submitted at this meeting, at a total cost not to exceed $250,000.00 and to arrange for the issue and disposal of bonds to provide funds necessary to cover the cost of said improvements.

It was the sense of the meeting that bonds should not carry a higher rate of interest than 3½ per cent.

The following resolution in relation to the issuance of bonds, was read and unanimously adopted:

Whereas, it is necessary that this Company shall borrow Two hundred and fifty thousand dollars ($250,000.00) for the purpose of completing, finishing and operating its railroad and shall
323 issue and dispose of its bonds to the amount above stated and shall mortgage its property and franchises to secure the payment thereof for the purpose aforesaid:

Therefore, Resolved, that the bonds of this Company shall be issued for an aggregate principal sum not exceeding Two hundred and fifty thousand dollars ($250,000.00) at any time outstanding, payable on the first day of October in the year one thousand and nine hundred and fifty-one, with interest thereon at a rate not exceeding four per centum (4) per annum payable semi-annually, on the first day of April and the first day of October in each and every year, when the principal shall be ful-y paid, both principal and interest to be payable at the office of this Company in the City of Troy, New York, without deduction for any tax or taxes which the Railroad Company may be required to pay or to take therefrom under or by reason of any present or future law of the United States, or of any State, County or Municipality therein; such bonds to be coupon bonds, each of the principal sum of One thousand dollars ($1,000.00) to be substantially in the form now submitted.

Resolved, that the President or Vice President, and the Secretary of the Troy Union Railroad Company, for the time being, may execute on behalf of and in the name of the Troy Union Railroad Company and under its corporate seal bonds for the aggregate principal sum of two hundred and fifty thousand dollars ($250,000.00) substantially in the form submitted to this meeting, the signature of the Treasurer of the railroad Company being engraved on each of the coupons attached to any of the coupon bonds:

Resolved, that the coupons attached to the said coupon bonds may be authenticated by the engraved signature of the present
324 Treasurer, or of any future Treasurer of the Troy Union Railroad Company, it being hereby intended that the railroad company may adopt and use for that purpose the engraved signature of any person who shall have been such Treasurer notwithstanding the fact that he may have ceased to be such Treasurer at the time when such bonds shall be actually certified and delivered.

Resolved, that the President or Vice President, and the Secretary of the Troy Union Railroad Company be, and they are hereby authorized, in the name and behalf of the railroad company and under its corporate seal, to execute, to acknowledge and to deliver to the Guaranty Trust Company of New York, a corporation of the State of New York, as Trustee, a mortgage or deed of trust to be dated October 1, 1901, upon the railroad property, franchises and income of this company, to secure an issue of bonds for the aggregate principal sum aforesaid, such mortgage or deed of trust to be substantially in the form submitted.

Resolved, that the officers of this company be, and they hereby are authorized to sell said bonds for not less than the par value thereof, with the accrued interest thereon.

Resolved, that the said mortgage or deed of trust shall contain a clause providing for the discharge of the principal sum to be secured by said mortgage or deed of trust by the payment of the Troy Union Railroad Company to the Guaranty Trust Company of New York of the sum of five thousand dollars ($5,000.00) annually, during the continuance of this trust, to be received and held by the Guaranty Trust Company of New York for the purpose of purchasing
325 from time to time any of the said bonds and coupons at a price not exceeding the par value of said bonds, and in case it shall not be able to purchase said bonds and coupons at the par value of said bonds, to purchase the said bonds and coupons at any price or prices which shall or may be from time to time approved by the Board of Directors of this Company, all of the bonds and coupons so purchased to be cancelled and not again issued.

Resolved, that no action be taken under the foregoing resolutions until the consent of the persons or bodies corporate owning at least two-thirds of the stock of this Company to the issue of said bonds and to the execution and delivery and issue of such mortgage shall be given in writing and shall be filed and recorded in the office of the Clerk of the County of Rensselaer, where this Company has its principal place of business and until the Board of Railroad Commis-

sioners of the State of New York shall have consented to the issue of such mortgage."

Mr. Carr: I also offer in evidence the following from the proceedings at the same meeting:

"The Manager made a statement in regard to an ordinance passed by the Common Council of the City of Troy, February 7, 1901, requiring gates to be erected at all street crossings within the city limits. The Manager stated that the expense would be about $4,200.00 and he was authorized to proceed with the work."

Mr. Carr: I offer in evidence the following from the proceedings of the Board of Directors at a meeting held December 7, 1903:

"President Newman then took the Chair; the Secretary reported that the new station at Troy with its subways and canopies
326 had been completed at a total cost of $268,754.03, as per letter from Mr. W. J. Wilgus, 5th Vice President N. Y. C. and H. R. R. R. Co., which forms a part of these minutes. Secretary further reported that all bills incident to the erection of the station had been paid except an item of $1,800 for construction of gates which had not yet been erected, although the money had been advanced by the several companies, to cover this expense. It was the sense of the meeting that Troy Union 4 per cent. notes in the sum of $250,000.00 be issued to the three companies in proportion to the amount each had advanced as per resolution of the Board under date of Jan'y 10th, 1903, and that the balance of $18,754.03 be taken care of through the book account."

Mr. Carr: Also the following from the proceedings of the Board of Directors at a meeting held May 31, 1904:

"Mr. Carstensen offered the following resolution:

Whereas, this Board did on the 10th of January, 1902, authorize the officers of the Company to borrow on behalf of the Company a sum not exceeding $250,000.00 as may be necessary to pay the cost of improving the station at Troy, and to issue promissory notes of the Company for the same bearing interest at the rate of 4 per cent. per annum, and in such form that they shall mature in amounts of $20,000 yearly until the whole sum is paid; and that the officers of the Company in their discretion may postpone the issue of said promissory notes until said station improvements shall be completed, and in the meantime may borrow, temporarily, and from time to time, sums of money needed for that purpose, and may pay interest thereon at the rate of 4 per cent. per annum; and

327 Whereas, it is now reported that the improvements at the Troy Station have been completed and at a cost of $268,754.03, which amount has been advanced by the three parties interested, as follows:

New York Central and Hudson River Railroad Co. ...	$134,377.01
Delaware and Hudson Company	67,188.51
Boston and Maine R. R. Company	67,188.51

and whereas, it is deemed expedient that the interest on such advances made by the respective Companies in interest may be waived,

Now, therefore, be it resolved: That the Troy Union Railroad Com-

pany issue its notes without interest, to each of the Companies in the amounts as stated above, the same to be accepted by the three parties in interest in full settlement of the advances made by them."

Mr. Carr: I read in evidence the testimony of F. A. Harrington from the former record, to be supplemented later by oral testimony:

"F. A. HARRINGTON, sworn for the relators, testified:

Examined by Mr. Carr:

Q. Where do you live, Mr. Harrington?

A. At Menands, Albany County.

Q. Are you connected with the Troy Union Railroad Co.?

A. I am its Secretary and Treasurer.

328 Q. And how long have you been its Secretary and Treasurer?

A. Ten years or more.

Q. Continuously?

A. Continuously, yes, sir.

Q. As such Secretary and Treasurer have you knowledge with reference to the minute books of the proceedings of the board of directors of the Troy Union Railroad Co.?

A. I have had the custody of the books of the company during that time.

Q. Well, have you also had the custody of the minute books of the time prior to your becoming such Secretary?

A. Such as were turned over to me when I was elected or appointed to the position.

Q. And can you designate them? In the first place how many of them are there that you have in your custody?

A. I can't state positively without reference, but I think I have books 2, 3, 4 and it is possible the present book is 5; it may be 4 and it may be 5; I am not quite clear.

Q. Well, so far as you understand it you have in your custody the minute books of the preceding time except book No. 1?

A. As far as I know I have such books, yes, sir.

Q. And is the book from which extracts have been read here today, as you understand it, the book No. 1?

A. (Examining the same) I so consider it, yes, sir.

Q. During the time that you have been Secretary and Treasurer what is the fact as to whether directors of the Troy Union Railroad Co. have been elected annually?

A. They have been elected annually in accordance with the provisions of the by-laws.

Q. And I suppose it is the fact, isn't it, that following the annual election there has been an election of officers each year?

329 A. In every case with the exception of this year the election was held in November and as yet the directors so elected have not met for organization, but undoubtedly will do so during the present month.

Q. The election of directors was held early in the month of November, was it not?

A. Yes, sir.
Q. But they have not organized?
A. They have not organized.
Q. And what have been the officers of the company?
A. The by-laws provide that there shall be a president, a vice-president and an executive committee appointed by the president. I think I am right about that, but it is contained in the by-laws. I don't think the executive committee is elected. I think it is appointed.
Q. Are there any other by-laws than those which appear in that book No. 1 (ind.), as you understand it?
A. Without comparing I couldn't state whether the by-laws in book No. 1 are the ones under which we are operating at the present time.
Q. Has the Troy Union Railroad Co. any man employed by it, and if so in what capacity?
A. The Troy Union have employed agents, selling agents for the various companies, baggage men handling the baggage, men in charge of maintenance of the tracks and flag men protecting the streets.
Q. That is the streets of the city of Troy are crossed by the tracks of the Troy Union Railroad Co. wherever there are tracks?
A. Yes, sir, I think about twenty streets are crossed by the tracks of the Troy Union Road.
Q. And are all of those crossings protected by flagmen or gatemen?
A. Either by flagmen or gatemen.
Q. Well, has it a station master who has charge of the station?
A. It has.
330 Q. And when you speak about an agent selling tickets it is in the ticket office in the station?
A. Yes, sir; the agents and assistant agents, of course.
Q. Certainly.
A. And if you desire me to make it explicit. Other employees not mentioned; those in charge of the operation of the restaurant which is used by the public, and also men employed in the care of the station, in the care of the heating and the cleaning and the proper policing of the property.
Q. Are there any signal towers?
A. Yes, sir; there are two signal towers in which signal men are employed.
Q. Is there a superintendent or manager?
A. Why, there is a man employed under the title of supervisor who has immediate charge of all the employees connected, or that are employed by the road.
Q. Now by whom are these various employees paid?
A. They are all paid by the Troy Union Railway.
Q. Has that been the case since you have been connected with the company, Mr. Harrington?
A. It has; invariably so.
Q. I suppose they are paid monthly, are they not?

A. They are paid monthly, yes, sir.
Q. By whom is the refreshment room in the passenger station operated; is it leased or operated by the company?
A. It is at present operated by the Troy Union Company.
Q. And for how long a time has that continued?
A. Why, for three years or more.
Q. How long has the present station been in existence?
A. Without referring to the records I couldn't state positively; four or five years.
Q. And it is located between what streets in the city of Troy?
A. Between Fulton street and Broadway.
331 Q. Well, is it a fact that Broadway was formerly Albany street?

The respective counsel concede that such is the fact.

Q. And previous to that a passenger house, or passenger station, was on the same place, was it not?
A. On practically the site, yes, sir.
Q. And are you able to state generally how long that had been there?
A. No, sir, I cannot.
Q. Have you any knowledge or information with regard to what is known as the great fire in Troy in 1862?
A. I have not, no, sir.
Q. But at all events ever since you have known the property the passenger house has been located between these streets?
A. It has.
Q. And is that in the line of what would be Sixth street if the passenger house were not there?
A. It is. Wait a second. Let us see. Just strike that out for a minute.
Q. When I speak of the passenger house I mean the entire station. I mean the house and the tracks themselves?
A. The tracks and the platform are in what would be the line of Sixth street. The building proper standing, as I understand it, outside of the line of Sixth street.
Q. That is true. But when I spoke of the passenger house I meant the entire station.
A. (No answer.)
Mr. Carr: I don't know what the fact is. Mr. Harrington, is the depot insured?
The Witness: It is insured, yes, sir.
Q. And in whose name is the insurance?

Objected to as incompetent, immaterial and not binding upon the defendants.

(Mr. Wellington:)

332 Q. Do you know? Have you ever seen the bills?
A. I have, yes, sir.

Mr. Carr: If you want me to produce the bills we will.
Mr. Wellington: No, I don't insist on that.

Objection overruled. Exception.

A. In the name of the Troy Union Railroad.
Q. And has that always been the case since you have been connected with the company?
A. It has.
Q. Does the track of the Troy Union Road run through a tunnel anywheres?
A. It runs through a tunnel, or under Congress street, yes, sir. I guess I had better answer that question direct. It does run through a tunnel; yes, sir.
Q. That is south of the station, is it not?
A. Yes, sir.
Q. And is the southern terminus of what is the Troy Union Road, or Troy Union Track, south of that underground passage?
A. It is.
Q. And the other terminus of the Troy Union track is in the vicinity of River street, is it not?
A. Yes, sir; to the west of River street, and near what is known in these proceedings as the Rensselaer and Saratoga bridge.
Q. By whom is the track maintained?
A. By the Troy Union Railway.
Q. Has that been so ever since your connection with the company?
A. Yes, sir.
Q. Well, what do you mean by the maintenance of the track?
A. Why, keeping it in such repair as it will be safe for the operation of trains.
Q. Does that involve the putting in of new rails where the
333 old ones become damaged or worn?
A. It does; also the renewing of ties and ballasting of tracks.
Q. And have these ties and these rails been purchased by the Troy Union since your connection with it?
A. They have, during my time the rails have been entirely——
Q. (Intg.) I mean those that have been needed for the purpose of keeping the track in repair during your connection with it?
A. They have, yes, sir.
Q. Are there gates at any of these different street crossings?
A. Yes, sir.
Q. And by whom were those gates put in?
A. By the Troy Union Road.
Q. And by whom are they maintained?
A. Maintained by the Troy Union Road.
Q. And has that been true since your connection with the company?
A. It has.
Q. Are books of account kept, Mr. Harrington, by the Troy Union?

A. They are.
Q. Where are those?
A. Those are kept in my possession.
Q. Well, are they kept in the office of the Troy Union in the——?
A. As a matter of convenience to myself they are kept in Albany, but the headquarters, or the office, of course is up in Troy.

Mr. Carr: I only inquire because I want to put those books in evidence.

Cross-examination.

By Mr. Wellington:

Q. Mr. Harrington, does the Troy Union Railroad Company own any cars?
A. They do not. Well, let me modify that. Possibly a push car or two or what is known as a trackman's car for handling
334 track material.
Q. You mean by that a hand car?
A. A hand car, yes, sir.
Q. Does it own more than one car?
A. I couldn't state positively.
Q. Are you sure that it owns as much as one hand car?
A. I wouldn't swear positively without referring.
Q. Aside from a hand car does the Troy Union Railroad Company own any cars of any description?
A. Not to my knowledge, no, sir.
Q. Well, does it?
A. No, it does not.
Q. Very well. Does the Troy Union Railroad Company own any locomotive?
A. No, sir.
Q. Either steam or electric?
A. No, sir.
Q. Has the Troy Union Railroad Company any source of income except assessments levied upon the New York Central & Hudson River Railroad Company, the Delaware & Hudson Co., The Boston & Maine Railroad Company?
A. Except some slight amounts for rent of small parcels of real estate. I should have to refresh my memory before answering directly on that. I think there are some; a little revenue in that direction from rent of real estate.
Q. Do you know where that real estate is?
A. Only in a general way. My mind is not clear about it.
Q. Very well?
A. There was a small parcel leased to Crandall, Knight & Reichard at the bridge; just how that is at present I don't know, but I shall be very glad to supply that.

Mr. Carr: I will look it up.
Mr. Wellington: Very well.

Q. Has the Troy Union Railroad Company any train dispatcher?

A. Not by that title. The station master, however, is responsible for starting from the station all trains leaving there.

Q. Yes. But from whom does he get his orders?

A. He would take his orders from the superintendents or other officials of the roads whose trains he was starting.

Q. The train dispatcher of the Boston & Maine is situated where?

A. I am not able to answer.

Q. The train dispatcher of the Delaware & Hudson is where?

A. I believe in Albany.

Q. The train dispatcher of the New York Central & Hudson River is where?

A. In Albany.

Q. What is your connection with the New York Central & Hudson River Railroad?

A. I am superintendent of the Mohawk Division.

Q. The officers of the Troy Union Railroad Company are whom?

A. W. H. Newman, President.

Q. And he is of what other road?

A. He is president of the New York Central & Hudson River Railway.

Q. Next?

A. The vice-president is Mr. C. S. Sims, also vice-president of the Delaware & Hudson Company; and as I have stated I am the secretary and treasurer.

Q. How many directors are there of the Troy Union?

A. 12.

Q. The New York Central & Hudson River Railroad Company has how many directors?

A. Six.

Q. The Boston & Maine how many?

A. Three.

Q. The Delaware & Hudson how many?

A. Three.

Mr. Carr: The mayor of the city is ex officio director.

The Witness: I should say then, 13.

Mr. Wellington: Technically, 13.

Mr. Carr: He is ex officio.

Q. The station, on the ground floor at the north end is occupied by some express companies?

A. Yes, sir.

Q. Do they pay rent?

A. They do.

Q. To whom?

A. To the Troy Union Railway. And you are refreshing my mind on that rent question.

Q. That rent is paid how frequently?

A. I believe it is paid quarterly; every three months.

Q. Do you receive it?

A. I do as treasurer, yes, sir.

Q. And what is done with it?

A. It is placed to the credit of the Troy Union Road in the Manufacturer's Bank of Albany, or rather of Troy.

Q. And in your own books how does the New York Central & Hudson River Railroad participate in that rent; how do you divide it; how do you apportion it?

A. It would hardly be apportioned in that way. It would be a source of revenue.

Mr. Carr: Objected to because it does not appear that it is apportioned in the books, or divided in the books at all. I don't understand it is.

The Witness: As matter of fact it is not.

A. The various amounts received from rent, including the express companies and what we get from the news companies and the small amounts received in various ways are deducted, as a whole, from month to month, from the gross expenses of maintenance and the operation of the statement, and whatever balance is necessary to pay for the operation of the road is derived from making a sight
337 draft monthly upon each of the three companies, one-half being received through a sight draft from the New York Central & Hudson River Railroad; one-quarter from the Delaware & Hudson——

Q. (Int'g.) Excuse me. You don't mean a sight draft "from" the company; you mean "upon?"

A. Upon. Make that upon. And a similar draft upon the Boston & Maine Company. Those drafts being deposited to the credit of the Troy Union Company in the Manufacturers' Bank, and from them we receive funds to meet the current expenses including the pay rolls and whatever bills have been made necessary for material from month to month for the maintenance and operation of the road.

Q. You say "maintenance and operation of the road." What road do you refer to.

A. I refer to the Troy Union Road.

Q. Well, how is the Troy Union Road operated? Does it operate a road?

A. Why, if by providing a station for the accommodation of the passengers, if selling the tickets and checking the baggage, protecting the crossings with gatemen and flagmen and employing men to throw the switches and handle the signals can be considered "operation" then I would say that the answer as made is correct.

Q. Does the Troy Union Railroad Company operate any train that comes into or goes out of the station?

A. It does not.

Q. Now we come to a bootblack stand in the smoking-room in the station. Is that rented?

A. Just what revenue the company derives I am unable to state.

Q. You don't know whether it is rented or not?

A. I believe that the men who have the privilege of black-
338 ing boots for that consideration take care of the toilets in the men's waiting-room and keep them clean.

Q. The news stand, is that rented?

A. It is, yes, sir.

Q. As treasurer of the Troy Union Railroad Company do you get the rent for that?

A. We do, yes, sir.

Q. The ticket office itself, is that rented?

A. It is not; no, sir.

Q. Who pays the salaries of the men who sell the tickets?

A. The Troy Union pay all of the men employed there.

Q. Who receives the cash paid to the ticket sellers received for tickets?

A. The ticket agent makes his returns for the tickets sold for the various companies direct to the companies interested.

Q. Do you as treasurer of the Troy Union get from the ticket sellers any of their receipts derived from the sale of railroad tickets?

A. I do not, no, sir. That covers it.

Q. I come now to the Western Union Telegraph Company which has an office on the ground floor. Does the company pay rent?

A. They do not.

Q. In the room occupied by the Western Union Telegraph operator is there not an operator employed by the Boston & Maine Railroad Company?

A. There are one or more operators employed by the Boston & Maine.

Q. Occupying that room?

A. Occupying that room, yes, sir.

Q. Does the Boston & Maine pay any rent for that privilege? I want to know whether any rent is derived from the Boston & Maine for a room on the first floor occupied by their telegraph operator *of* operators?

A. I think not.

Q. Does the Delaware & Hudson have an operator in that room?

A. No, sir, I think not.

339 Q. Does the New York Central?

A. Well, let us go back a little, Mr. Wellington. There is one operator employed whose salary is paid, a portion by the Western Union, a portion by the Delaware & Hudson and a portion by the New York Central and I think a portion by the Boston & Maine.

Q. He is a telegraph operator?

A. Yes, sir.

Q. He occupies a portion of the telegraph room?

A. Yes, sir.

Q. On the first floor?

A. Yes, sir.

Q. Of the Troy Union Station?

A. That is right.

Q. Now, is there also an additional telegraph operator in there who is employed exclusively by the Boston & Maine?

A. There is, yes, sir.

Q. There is no other operator employed exclusively and paid exclusively by any one of the railroads?

A. No, sir.

Q. Now, there is a room occupied by the express company that owns the Wescott Express. Does that concern pay rent?

A. I should have to look up the record, because the contract with that company was modified. I know they did pay rent at one time but I think in the modification, Mr. Carr, of that contract, they were allowed to occupy, rent free, but I am not quite clear about that. I should be very glad, however, to produce the books here and give you information later.

Q. Now we come to the large baggage room. That is maintained out of the treasury of the Troy Union Railroad Company?

A. Yes, sir.

Q. On the second floor there is a restaurant?

A. Yes, sir.

Q. The rent from that is received by you as treasurer of the Troy Union?

A. No, sir; there is no rent paid. The Troy Union operates
340 the restaurant, employing the help, purchasing the supplies and catering to the public.

Q. Now, on the second story has the Delaware & Hudson Company any offices?

A. We have just leased one small room to the Delaware & Hudson, and if they do not occupy it they will as of the 1st of January.

Q. Will it pay rent for that?

A. They will, yes, sir.

Q. The Boston & Maine have offices?

A. The Boston & Maine have four rooms for which they pay rent.

Q. And the Boston & Maine pay rent?

A. They pay rent regularly; yes, sir.

Q. Do they pay rent to you as treasurer of the Troy Union?

A. They do; they send me a check every three months, I think.

Q. That is not their rent? Isn't it added to the portion of assessment that is levied for general expenses?

A. No, sir; that is treated as a separate matter.

Q. Has the New York Central & Hudson River a room or rooms there?

A. No, they have no rooms.

Q. Is there anything on the second story above the baggage room?

A. No, sir.

Q. No rooms there?

A. No, sir. Well, let us see. The restaurant comes directly over the baggage room.

Q. I mean south of the baggage room; south of the restaurant nothing there?

A. Except a conductors' room which is occupied by the conductors

for making up their reports, and as a resting room for all three of the railroads; used in common.

Q. No rent charged for that?

A. No rent charged for that.

Q. When you draw upon each one of those railroad companies for the respective proportion that each is to pay of the expenses, et cetera, do you include the amount that the Troy Union
341 Railroad Company pays for taxes?

A. We do.

Q. And insurance?

A. Yes, sir.

Q. And assessments if there are any? That pavement you must have paid for?

Mr. Carr: There isn't any doubt about that, Mr. Wellington.

A. Yes, sir, city assessments.

Q. Assessments for local improvements?

A. Yes, sir; they are all treated in the same way.

Q. You have heard of Chapter 255 of the Laws of 1851? (Presenting same.)

A. (Examining same) I have read the act to this point (ind.).

Q. Have the railroads running from the city of Troy used the railroad track or tracks within the city limits with equal privileges?

A. They have.

Q. And on equal terms?

A. Yes, sir.

Q. Does the New York Central & Hudson River Railroad Company pay to the Troy Union Railroad Company any amount aside from or in addition to the one-half of the expenses levied against it by the Troy Union Railroad Company to which you have already testified?

A. Not to my knowledge.

Q. In making up a charge against the New York Central & Hudson River Railroad Company, do you include any sum for the use of the railroad tracks in question?

A. No, sir.

Q. In making up your charge against the Boston & Maine do you include any item of charge for use of the railroad tracks in question?

342 Mr. Carr: I suppose you mean by that whether any such item or statement appears?

Q. As matter of bookkeeping does that item appear?

A. No, sir.

Mr. Carr: That is what I supposed the item meant.

The Witness: No, sir; the same is true of the Delaware & Hudson.

Q. And the same is true of the Delaware & Hudson?

A. Yes, sir.

Q. Then I ask you whether any one of the companies pays the Troy Union Railroad Company anything at all for the use of any of these tracks in question?

Objected to as incompetent, improper and calls for a legal conclusion from the facts, as to what payments are made and what assessments are levied upon those three companies, and those facts are already in the record.

Objection overruled.
Relators except.

A. As treasurer of the Troy Union Road there are no receipts from the various companies other than I have described above.
Q. In making up your monthly statements upon which the drafts in question are drawn upon the respective roads do you send to each road an itemized statement?
A. I do; attached to the draft.
Q. Do you keep copies?
A. I do.
Q. Well, will you produce the statements say, of the *lost* six months?
A. I will.
343 Q. They are characteristic of the statements that have been rendered during your term?
A. They are; yes, sir.
Q. You are familiar with the instrument dated July 1st, 1858?

Mr. Carr: That is the reformed agreement, so-called?
Mr. Wellington: That is the reformed agreement, so-called.

A. (Examining same) Yes, sir.
Q. I call your attention to the fifth section of the instrument dated July 1st, 1858, and I ask you whether the Troy Union Railroad Company has prescribed any rules or regulations concerning the use of the track, passenger house or other property mentioned in that section?
A. Now, may I look at the section once more?
Q. Yes.
A. (Examining same) There are certain rules governing the operation of signals which are in force. Frankly I don't catch the force of this question, Mr. Wellington.
Q. What I want to know is, are there any rules prescribed by the Troy Union Railroad Company that restrict the use of the tracks in question?
A. I should say there are no rules which restrict the use of the tracks.
Q. Are there any rules of the Troy Union Railroad Company that restrict the use of the passenger station?
A. I know of none.
Q. The Troy Union Railroad Company has fixed the rent charges for certain rooms which you have already testified to?
A. Yes, sir.
Q. Where is the stockholders' meeting of the Troy Union Railroad Company held?
A. In the Troy Union station.

344 Q. What room?

A. Why, in a room, in the—let us see—that would be the north wing of the building.

Q. Up-stairs?

A. In the second floor, yes, sir.

Q. Have the directors met every year?

A. They have.

Q. And have elected officers?

A. Yes, sir. I explained the election of this year.

Q. Just excepting this year?

A. Yes, sir.

Q. Has the company ever paid any dividends upon its stock?

A. Not to my knowledge.

Q. Its receipts exactly equal its expenditures?

A. Yes, sir.

Q. And those expenditures do not include any profit——

A. (intg.) No, sir.

Q. (Contg.) —divided amongst its stockholders?.

A. No, sir.

Q. Are its officers paid any salary?

A. No; except the secretary and treasurer.

Q. Does the Troy Union Railroad Company participate in the making up of the time tables of the New York Central & Hudson River Railroad Company showing the time of the arrival and departure of trains at Troy?

A. It does not.

Q. Does it participate in the making up of the like time tables of the other railroads entering the city of Troy?

A. It does not.

Q. Do the passenger tickets sold show that the routes of the various roads to and from the station at Troy are over the Troy Union Railroad?

Mr. Carr: You may take that as a fact, they don't.

A. No.

345 By Mr. Carr:

Q. Who are the stockholders of the Troy Union?

A. There is one share of stock standing in the name of each director of the company. The balance of the stock—that would be hardly right, would it?

Q. Held by the three companies?

A. Held by the three companies.

Q. And the one share of stock in the name- of the directors is simply to qualify them as directors?

A. That is it.

Q. It is a fact, is it not, Mr. Harrington, that the directors are persons who are either officers of or connected with the different companies?

A. Yes, sir.

Q. And has that been the case since you have been connected with the company?

A. Yes, sir, it has.

By Mr. Wellington:

Q. A ticket bought from Troy, from the station at Troy, to New York, purports to be issued by the New York Central & Hudson River Railroad Company for a continuous journey, does it not?

A. It does.

Q. A ticket bought from Troy to any station on the Boston & Maine is issued by the Boston & Maine, and is for a continuous journey from the station at Troy to the station in question?

A. I assume that that is a fact.

Q. Likewise that is true of the Delaware & Hudson Company?

A. I assume that is so, yes, sir.

Mr. Carr: There is no question about that."

Mr. Carr: I also read in evidence the testimony of Mr. McLindon:

346 CHARLES F. McLINDON, sworn for the relators, testified:

Examined by Mr. Carr:

Q. Mr. McLindon, do you hold any official station in connection with the city of Troy?

A. Yes, sir.

Q. What?

A. Deputy Comptroller.

Q. And as such have you charge of a book containing any record of the bonds issued by the city to the Troy Union Railroad Company?

A. We have in connection with the Treasurer's office; we haven't sole control of it.

Q. Well, in connection with the Treasurer's office you have?

A. Yes, sir. I will say it is in the vault that is used by both offices.

Q. Is the book which is used by you the one which contains that record?

A. Yes, sir, it contains the record as far as I am familiar with it.

Q. And what does it show?

A. It shows on page 43 that Troy City bonds were issued and is entitled 'Loaned to the Troy Union Railroad Company.'

Q. What was the amount as appears in that book that were issued under that?

A. Why, on page 43 the total appears $680,000. And then there is an entry at the bottom of the page which says 'See page 47,' for $27,000 additional bonds. That is on page 43. And on page 47 $27,000 of additional bonds appear.

Q. Of the same character?

A. Appear to be the same character, yes, sir, except that the year is marked 1854, and the other is 1853.

Q. Now does this show when these bonds that were issued were due?

A. They appear to be payable in 20 years with interest at six per cent.

347 Q. Is that true of the first $680,000, of all of them?

A. No, not all of them. The first $250,000, and the next $100,000, were due in 15 years.

The next $100,000 in ten years.

The next $50,000 in 20 years.

The next $50,000 in 20 years.

The next $50,000 in 20 years.

The next $25,000 in 20 years.

The next $30,000 in 20 years.

And the last $25,000 in 20 years.

But they are all dated January 1st, 1853 to and including May 23rd, 1854; they weren't issued the same day.

Q. And as to the additional $25,000?

A. They were issued on the first of October, 1854.

Q. And does it appear from this book when they were due?

A. October 1st, 1858; October 1st, 1857; October 1st, 1856, and October 1st, 1855.

Q. Does it appear upon that book whether or not those bonds were paid?

A. Not from any entries that are plain to me. The books are not kept in the manner which we keep them now, so I could not tell from the entries as to when they were paid, or whether they were paid.

Q. Well, is there anything in the Treasurer's office which would show when they were paid?

A. I couldn't tell that.

Q. Is there any other office than the Treasurer's office where that information should be?

A. I think the Treasurer's office of those days should show that; of coerse that is guess work; that date we hadn't anything to do with them. We can tell from a glance now from our books—when due and payable, because we always make an entry now right over here (ind.).

348 Mr. Carr: I guess that is all you can tell me?

A. Yes, sir.

Cross-examination.

By Mr. Wellington:

Q. When were the first $250,000 of the bonds issued?

A. January 1st, 1853.

Q. When were the next $100,000 issued?

A. January 1st, 1853.

Q. When were the next $100,000 issued?

A. January 1st, 1853.

Q. When were the next $50,000?

A. January 1st, 1853.

Q. When were the next $125,000?
A. January 1st, 1854.
Q. The next $30,000?
A. March 27, 1854.
Q. The next $25,000?
A. May 23rd, 1854.
Q. And the next $27,000?
A. October 1st, 1854.
Q. Now is this page (ind.) entitled?
A. The page is entitled: 'Troy City bonds loaned to the Troy Union Railroad Company'?
Q. Bearing——
A. (Intg.) Bearing interest at the rate of six per cent per annum payable at the Merchants Bank in New York.
Q. You know that those bonds have been paid?
A. Oh, no, I don't. This (ind.) is the only record I know anything about.

It is conceded that the entire issue of bonds was paid, and the last ones in 1883.

By Mr. Carr:

349 Q. Have you any means of telling whether the dates given there are those when the bonds were actually delivered to the Troy Union or when in fact issued by the city?
A. I haven't any other means outside of the entries."

Mr. Carr. I have put in the direct and cross-examination of both witnesses so it will go into the record right here.

FRANCIS A. HARRINGTON, sworn for relator, testified:

Examined by Mr. Carr:

Q. You live where, Mr. Harrington?
A. 93 Ten Broeck street, Albany.
Q. You were sworn as a witness in the former proceeding to review the assessment of the Troy Union Railroad Company, were you not?
A. Yes, sir.
Q. That was in 1908, or about that time; it was to review the assessment of 1907?
A. I don't recall, but I assume that is right.
Q. At that time you testified you were the secretary and treasurer of the Troy Union Railroad Company and had been for a period of time; have you continued to be the secretary and treasurer of the Troy Union Railroad Company since you were examined upon that hearing?
A. I have. I find that I was elected secretary and treasurer and manager and director at a special meeting of the Board held January 27, 1893, nearly 20 years ago.
350 Q. And you have been such since that time?

A. I have.

Q. Now since you were examined upon that hearing has there been an election of directors of the Troy Union Railroad Company every year?

A. Yes, sir.

Q. And have the directors elected the officers of the company?

A. Every year, yes, sir.

Q. There has been no change in that system from what it was before you were examined upon that hearing?

A. The conditions have remained the same.

Q. Now when you were examined at that time were you interrogated about the insurance upon that station; has that insurance continued in the same form since that time?

A. Yes, sir.

Q. I don't mean the same policies, but the station was insured in the Troy Union?

A. The insurance has always been in the Troy Union Company; the amounts have varied from time to time.

Q. But there has been no change as to the party insured?

A. Not at all.

Q. Now have the accounts been kept the same as between the Troy Union and the three companies that are stockholders of the Troy Union since you were examined upon that trial and before?

A. The same form has prevailed ever since I have ben treasurer.

Q. Been no change since you were examined at that time?

A. None whatever.

Q. And has there been any change so far as the maintenance of the track of the Troy Union is concerned?

A. None whatever.

Q. Or as to the employment of gatemen at the crossings?

A. The same practice has prevailed during the 20 years that I have been manager.

351 Q. Or as to the signalmen, same practice?

A. Same practice.

Q. What I want to get at is the methods since you were examined have been the same as they had been prior to that time?

A. There has been no change whatever in the method of maintenance and the operations of the station since I became connected with the road some years ago as a director.

Q. Now what have you to say, Mr. Harrington, as to whether during this time that you have been secretary and treasurer and manager there has been an assessment upon the Troy Union of $30,000?

A. Can I refer to these minutes?

Q. Certainly, refer to anything.

A. Up to and including the year 1906 the assessments were based on the capital stock of the company, of $30,000. After 1906 and including 1907, '8, '9, '10, '11 and '12 the state and county taxes have been assessed on a valuation of one million dollars, those taxes have been paid, including the current year.

Q. The tax on the $30,000 was paid every year up to 1906?

A. Yes, sir; since that time they have been paid on the increas under protest.

Q. And the capital stock of the company when you first knew anything about it was $30,000?

A. And still remains so.

Q. And that remains so?

A. Yes, sir.

Q. Mr. Harrington, is there a map of the Troy Union road, I mean its tracks and the location of its land and everything of that kind?

A. I haven't it here but we have such a map; it can be produced.

Mr. Carr: I would like to get a copy of that map made, I
352 think it would be of some value to us, the location of the tracks. If you will have a blue print made I would like to have it. I would like to have that sent to us.

Q. Now have you produced the minute book that contains the reformed agreement of 1858; is that the book that is here?

A. Yes, sir. I present it, the printed reformed agreement is before me in this minute book called No. 2.

Q. That is the printed document that appears on pages 93, 94, 95, 96, 97 and 98 of this minute book No. 2?

A. Yes, sir.

It is understood that this minute book No. 2 will be produced at the submission of the case for the inspection of the court of this instrument that appears on the pages that I have named.

Q. Have you the minute book here, Mr. Harrington, of the proceedings of the stockholders and directors of the company since you were examined before, I mean the current book?

A. I have it here, yes, sir.

Q. Will you let me see it?

(Witness produces same.)

Q. Mr. Harrington, is the book you produce, which is marked minute book No. 4, the current book of the minutes of the Troy Union?

A. It is, yes, sir.

Q. And contains the minutes down to the present time?

A. The present date.

Mr. Carr: Now I offer in evidence what appears on pages 267, 268 and 269 relative to a proposition from the United Traction Company to the Troy Union Company to lease a small piece of land near the River street approach to the D. & H. Company's bridge. Also
353 relative to a lease to the National Express Company. Also relative to a lease to Crandell, Knight & Reichard for land occupied by them fronting on River street. Also with reference to a lease to the Western Union Telegraph Company of a room or rooms in the station. Also with reference to a side track for the Stanton Brewing Company.

Following is a copy of the same:

"Albany, N. Y., December 22, 1908.

A special meeting of the Executive Committee, of the Troy Union Railroad Company was held at Room 6, Union Station, Albany, N. Y., at 12.45 p. m., December 22, 1908.

Present: Mr. C. S. Sims, Mr. F. S. Davis, Mr. F. A. Harrington, Mr. J. Carstensen.

Mr. Sims as Vice President, presided.

The Manager stated that he held a proposition from the United Traction Company to lease a small piece of land near River Street approach to the D. & H. Company's Bridge, at Troy, for the purpose of erecting a passenger station thereon. On motion of Mr. Harrington, which was seconded by Mr. Davis and carried, the application of the United Traction Company to lease this plot of ground was approved, the rental to be pro rata with that now paid or which might be paid in future by Crandell, Knight and Reichard, for land adjoining, which they lease from the Troy Union Railroad Company.

At Mr. Sims's request the papers were turned over to him in order that he might have the description and measurements checked, before the leases were put in shape for signatures.

354 The Manager stated that for a period of twenty years or more the National Express Company held a lease of the space they occupied at Troy Station for their business, calling for a rental of $2,000 per annum, for the use of the building, and $900 per annum for heating and lighting, that this lease expired last April and they have continued to pay the same rental, that is $2,900 furthermore, that he had had a lease drawn contemplating the continuance of this privilege to the National Express Company for a period of one year and thereafter until such time as either party gave a six months' notice to the other, of their desire to cancel same, the consideration for the new lease being $3,000 per annum. The Manager further stated that he had discussed with General Manager Smith of the National Express Company, the proposed increase in rental, who at first demurred, expressing the opinion that the rental should be reduced rather than increased, basing his opinion on the lease to the American Express Company at Albany, but at a subsequent interview Mr. Smith expressed his willingness to execute a lease at $3,000 a year. The Manager presented the proposed lease to the National Express Company, at a rental of $3,000 per annum, for one year and thereafter, until either part give six months' notice to the other of its desire to terminate same and made a motion that this lease be authorized. After examination of the lease by the Committee, Mr. Harrington's motion was seconded and carried.

The Manager stated that the lease to Crandell, Knight and Reichard, for land occupied by them, fronting on River street, had expired and presented a draft of lease for a period of one year
355 and thereafter until lessees were given thirty days' notice to vacate, the consideration being $50.00 per annum and his motion that it be approved and executed on the above terms was seconded and carried.

The Manager brought to the attention of the Committee, the fac
that there had never been an agreement or contract with the Weste
Union Telegraph Company covering the privilege at Troy Unio
Station and explained that he had been in correspondence and als
had an interview with Gen'l Superintendent Mulford of the Weste
Union Telegraph Company with the view of having an agreeme
executed. A motion was made by Mr. Harrington, which was se
onded and carried, that Mr. Sims take up the question with th
Western Union Telegraph Company and negotiate a contract to b
approved by the Executive Committee, before being made effective.

In connection with the building of the side tracks at Troy for th
Stanton Brewing Company, Mr. Sims stated he had personally calle
on the Brewing Company twice within the past week and that the
were not ready to proceed on account of not having acquired som
land which they were endeavoring to secure.

The motion was made and seconded and carried, that Mr. Dav
look into and report upon the advisability of building a termin
warehouse in the City of Troy for the common use of the tenant lin
of the Troy Union Railroad Company, that the questions to be co
sidered are: [redacted]

1st. The approximate location.

2d. The approximate cost.

3d. Its revenue and advantage to the city and to the several co
panies comprising the Troy Union Company and the advi
356 ability of such a warehouse being given a terminal charge
3 to 5 cents per hundred pounds on goods passing through
hands.

There being no further business before the Committee, the me
ing adjourned."

Mr. Carr: Now that is from the proceedings of the Board of Dir
tors of December 22, 1908. Now I offer in evidence from the pr
ceedings of the Board of Directors of the Troy Union Railroad Co
pany at a meeting held March 26, 1909, what appears on page 2
with reference to the application of the Stanton Brewing Compa
for a side track. Also the proposed lease of space to the Weste
Union Telegraph Company in the Troy Union Station. Also re
tive to the establishment of a freight and storage warehouse on t
line of the Troy Union Railroad to be used jointly by the tena
lines.

Following is a copy of the same:

"Albany, N. Y., March 26th, 1909.

A special meeting of the Executive Committee of the Troy Uni
Railroad Company was held at Room No. 6, Union Station, Alba
N. Y., at 2.30 p. m., March 26th, 1909.

Present: Mr. C. S. Sims, Mr. F. S. Davis, Mr. F. A. Harringt
Mr. J. Carstensen.

Mr. Sims as Vice President presided as Chairman.

The minutes of the last meeting were read and approved.

Mr. Sims reported on three matters which had been referred to him at last meeting as follows:

1st. In regard to the subject of application from Stanton
357 Brewing Company of Troy for side track. Mr. Sims stated that he had interviewed this concern who were not ready to have the track installed pending purchase of additionel property by them.

2d. Proposed lease of space to the Western Union Telegraph Company in the Troy Union Station. Mr. Sims reported that Mr. C. E. McKim, General Supt. of Transportation for D. & H. Company was negotiating with the Western Union Company with a view of having such a lease executed.

3rd. Mr. Sims reported that lease of property belonging to the Troy Union Railroad Company to the United Traction Company as authorized at previous meeting had been executed.

After discussing the question of establishing freight and storage warehouse on the line of the Troy Union Railroad to be used jointly by the tenant lines, motion was made, seconded and carried that the matter be referred to the Traffic Department of the New York Central & Hudson River Railroad with request that they take up the question and discuss it with the Traffic Managers of the other roads interested and report back to the Executive Committee for further consideration at subsequent meeting.

Motion made, seconded and carried that the restaurant of the Troy Union Station be abandoned and the space now occupied by it be used for officers and fitted up for such at an expense not to exceed $1,500.00, also that a lunch counter be provided in the subway to take the place of the restaurant subject to the approval of the Passenger Department of the New York Central and Hudson River Railroad Company.

Mr. Sims stated to the Committee that his Company had
358 purchased property in the vicinity of Adams street and would probably make application for side track leading to this property off Troy Union Road for the purpose of establishing team delivery at this point, when motion was made, seconded and carried that Mr. Harrington look into the advisability of the Troy Union Railroad Company purchasing a small piece of property in the neighborhood of Adams street or some other location which could be utilized advantageously for bulk delivery tracks for the common use of the owners of the Troy Union Company.

There being no further business before the Committee, the meeting adjourned."

Mr. Carr: I also offer in evidence from the proceedings of the Board of Directors of the Troy Union held May 5, 1909, the following on page 272 of the minute book with reference to the application from the Stanton Brewing Company for a side track. Also with reference to the proposed lease contract with the Western Union Telegraph Company for space in the station.

Following is a copy of the same:

"Albany, N. Y., May 5th, 1909.

A special meeting of the Executive Committee of the Troy Unio
Railroad Company was held at Room No. 6, Union Station, Albany
N. Y., at 12:30 P. M., May 5th, 1909.

Present: Mr. J. Carstensen, Mr. C. S. Sims, Mr. F. S. Davis, M
F. A. Harrington.

Mr. Sims as Vice-President presided as Chairman. The minute
of the last meeting was read and approved. Mr. Sims reported o
two matters, which had been referred to him at the previous meetin
as follows:

359 1st. In regard to the application from the Stanton Brewin
Company of Troy for a side track. Mr. Sims stated that h
had talked with Mr. Santon subsequent to the last meeting and M
Stanton had said that he was not yet ready to proceed.

2d. Proposed lease of contract and space to the Western Unio
Telegraph Co., in the Troy Station. Mr. Sims stated that negoti
tions were still in progress with the Telegraph Company and he e
pected to have a definite report to submit at a later date.

Mr. Harrington stated that in connection with the resolutio
passed at the previous meeting directing him to look into the a
visability of the Troy Union Railroad Company purchasing a sma
piece of property in the neighborhood of Adams street, which cou
be utilized advantageously for bulk delivery tracks for the comm
use of the owners of the Troy Union Co., that he had been furnish
by Mr. Mullen, Gen'l Traffic Manager of the D. & H. Co., with
plan showing the location of the property which it seemed desira
to acquire and from whom an option had been obtained from Pet
son and Packer for $16,492.13 plus 6 per cent. interest from Janua
8th, 1907, to date of purchase, this option still having about t
weeks to run. Mr. Harrington made a motion which was second
and carried, that it was the sense of the Committee that the Tr
Union Co., should not undertake to acquire the property mention
for the establishment of team delivery tracks.

Mr. Carstensen moved that the application of the D. & H. Compa
to establish a bulk delivery freight yard near Adams street Statio
Troy, N. Y., connecting with the tracks of the Troy Union Railro
Company be recommended by the Committee subject to t
360 approval of the Board of Directors, which motion was second
and carried.

The proposition to locate a lunch room in the subway was d
cussed and the conclusion arrived at unanimously that the Board
Directors be requested to approve the sketch submitted of the lun
counter arrangement, subject to such minor alterations as might
approved by the Manager.

The subject of the Special Franchise taxes assessed against t
Troy Union Railroad Co., was then taken up and reviewed by t
Committee and a letter from Mr. L. E. Carr, Counsel for the Delaw
and Hudson Company, who has been conducting the litigation in
dent to the assessments in behalf of the Troy Union Co., was re

The motion was made and carried that Mr. Carr be requested to furnish a synopsis of the entire matter with his recommendation as to the most desirable method of adjustment of same, to be submitted for the consideration of the Committee and by them to the Board of Directors.

The Committee expressed themselves in favor of a special meeting of the Board of Directors to be held May 24th to consider the questions of team delivery tracks near Adams street, Troy, the Special Franchise tax and such other business as might be presented and Mr. Harrington, as Secretary, was requested to arrange for such meeting.

There being no further business before the Committee, the meeting adjourned."

Mr. Carr: I also offer in evidence the following from the proceedings of the Board of Directors of the Troy Union Railroad
361 Company, at a meeting held January 16, 1911, which appears on pages 302 and 303 of the minute book No. 4, which relates to a lease by the Troy Union Railroad Company to the Young Men's Christian Association of a portion of its land. Also with reference to a lease to the New York Telephone Company of space in the waiting room of the Troy Union Station that appears on page 303. Following is a copy of the same:

"New York City, Jany. 16th, 1911.

At a meeting of the Board of Directors of the Troy Union Railroad Company, held at the General Office Building, Grand Central Terminal, in the City of New York, on Monday, the 16th day of January, 1911, pursuant to due notice given each Director, there were.

Present: Mr. William C. Brown, Mr. William H. Newman, Mr. F. A. Harrington, Mr. Ira A. Place, Mr. W. L. Pratt, Mr. C. S. Sims, Mr. W. K. Vanderbilt, Jr.

The minutes of the Board of Directors at meeting held November 21st, 1910, were read and approved.

The President stated that there was a vacancy in the Board, caused by the death of Edward V. W. Rossiter, at Flushing, L. I., on the 11th of December last.

Upon motion of Mr. Place, Mr. William K. Vanderbilt, Jr., was appointed a Director of the Company to fill such vacancy.

Mr. Vanderbilt here appeared and took his seat in the Board, making seven (7) Directors present.

Vice-President Sims stated that the building of the Railroad Branch of the Young Men's Christian Association has occupied a part of the Depot property at Troy for about thirty years without a
lease; that the Association contemplates making some im-
362 provements that will call for the expenditure of quite a large sum of money and desiring to be assured of its occupancy for a number of years has asked that it be given a formal lease of the premises containing a provision that the Association shall be reim-

bursed for any loss sustained should the company be obliged to cancel the lease and take over the building.

After consideration, the following was presented by Mr. Place and on motion, adopted:

Resolved, that the proper officers be and they are hereby, authorized to execute under the seal of the Company, a lease to the Railroad Branch Young Men's Christian Association of the premises at Troy, N. Y., now occupied by its building, the form of such lease to be approved by a Committee consisting of Messrs. Sims, Harrington and Pratt.

After some explanations by Vice-President Sims, the following was presented and on motion, adopted:

Resolved, that the proper officers of this company be, and they are hereby, authorized to execute under the seal of the company a lease to the New York Telephone Company of sufficient space in the waiting room of the Troy Union Station for installing four telephone booths, with operator's desk, at an annual rental of $450.00 the form of such lease to be approved by a Committee consisting of Messrs. Sims, Harrington and Pratt.

And then the Board adjourned."

Cross-examination.

By Mr. Wellington:

Q. Mr. Harrington, you were in error, were you not, in stating that the taxes for the years 1907, 8 and 9 were paid under protest? They were not.

A. Yes.

363 Q. Mr. Harrington, it appears from the minute book of the Troy Union Railroad Company that that corporation approved of and authorized the execution of the so-called reformed contract dated July 1, 1858?

A. Yes, sir.

Q. Then in the minute book was pasted a printed copy of that reformed agreement with certain words underscored in red?

A. Yes, sir.

Q. On one of the pages at the end of the seventh paragraph in the reformed contract there appears "1-10 who owns?" Do you know in whose handwriting that is?

A. I do not.

Mr. Carr: I have a copy of a map here of the Troy Union road, its location and all that, I will have it marked, and that will be submitted to the referee.

The Referee: It is a blue print?

Mr. Carr: It is a blue print, but I want to have it preserved because it is the only one we have got.

Received and marked "Ex. A of Nov. 26, 1912."

It may be used by either party and need not be reproduced in the case.

The relator rests.

Mr. Wellington: I want to offer in evidence the protest in writing filed by the New York Central & Hudson River Railroad Company with the assessors of the City of Troy on grievance day, when they sat to hear grievances relating to the assessment in question for the year 1911.

364 The following is a copy of the same:

"In the Matter of the Application of THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY for a Cancellation of and Reduction of Special Franchise and Real Estate Assessments Imposed upon It in the City of Troy for the Year 1911.

To G. Frank Mealy, George Spence, Jr., George B. Walker, Silas Downs, Jr., as assessors of the city of Troy, Rensselaer County, N. Y.:

First. The New York Central and Hudson River Railroad Company, considering itself aggrieved by the assessment placed against it, upon the assessment roll for your said City, now open to public inspection for the year 1911, and about to be finally completed, respectfully objects to and protests against the same, stating as the grounds of its grievance and complaint in respect thereto as follows:

'Third Ward—Troy Union Railroad Company, Boston & Maine Railroad Co., Delaware & Hudson Co., New York Central & Hudson River Railroad Co.

Interest of all and each as the same may appear in lands and road-bed and adjacent thereto in the several wards of the City, with rails, superstructures, depot, building and appurtenances, be-
365 ing all the railroad property in the City of Troy, located between Madison St., on the south, Hoosick St., on the north and the approach of the Delaware & Hudson Co., on the west, excepting that portion assessed as franchises lying in public streets, valuation $1,000,000

Troy Union Railroad Company, Boston & Maine Railroad Co., Delaware & Hudson Co., New York Central & Hudson River Railroad Co.

As the interest of all and of each may appear, Special Franchise, track lengthwise of Sixth Ave., across Madison St., First, Ida, Second at intersection of Jefferson and Franklin St., Third, Church, Adams, Fourth, William Hill, Washington Sts., Fifth Ave., Liberty, Pine, Hutton, Hoosic Sts., (Highway Bridges), Federal St., Fifth Ave., Maiden Lane, River St., Fifth Ave., (North Y.) Green, (North Y.) and Seventh Ave., valuation $215,400

Second. Each of the above mentioned assessments is illegal, erroneous, unjust and inequitable, because each of said assessments is made against the Troy Union Railroad Company, Boston and Maine Railroad Co., Delaware & Hudson Company, and New York Central

and Hudson River Railroad Co., as the interest of each and all may appear, and are not in accordance with the law relating to the assessments of real property are required to be made against the owner or owners thereof. The above assessments are made against several different persons or corporations as the interest of each and all may appear, and are not in accordance with the law relating to the assessments of real property. Special Franchises are by law to be assessed as real estate, and are in like manner to be assessed against the owner or owners thereof. For the reasons above stated the assess-
366 ments are erroneous and illegal and should be cancelled inasmuch as they are not correctly made.

Third. The above assessments are for the railroad and the property of the Troy Union Railroad Company, in the City of Troy, and the Special Franchise assessment is for so much of said railroad property as is located in streets and public places in said City. The property so located and used is the property of the Troy Union Railroad Company, a corporation by which such property was originally constructed and created, and has been since its construction and creation maintained, and is now so maintained. The New York Central and Hudson River Railroad Co. does not own said property so assessed to it, or any part thereof. The said New York Central and Hudson River Railroad Company is a stockholder in the Troy Union Railroad Company, and has such interest in said property as a stockholder has in the property of a corporation in which he or it owns stock, and no more interest than such stockholder. The New York Central and Hudson River Railroad Company uses the railroad property and the station of the Troy Union Railroad Company for the operation of its trains, and the transaction of its business, but such uses thereof are under the regulation and control of the Troy Union Railroad Company and by agreement with the said Troy Union Railroad Company and are the same uses only as are granted to the said New York Central & Hudson River Railroad Company by the Troy Union Railroad Company, and no more.

Fourth. The New York Central and Hudson River Railroad Company, therefore, has no tangible property in the streets or public places of the City of Troy, included within the boundaries of
367 the said assessment hereinbefore set forth, and the State Board of Tax Commissioners has no jurisdiction or authority to impose upon the said The New York Central and Hudson River Railroad Company any assessment for a Special Franchise for the property of the Troy Union Railroad Company, so used by the New York Central and Hudson River Railroad Company, as aforesaid.

The said assessments against the New York Central and Hudson River Railroad Company above set forth are, therefore, erroneous and illegal, because the said The New York Central and Hudson River Railroad Company has no such ownership of, or interest in, the property described in such assessments, as is subject to assessment against the New York Central and Hudson River Railroad Company.

Fifth. Such assessments are and each of them is further erroneous and illegal because the property which is the subject of the said assessments, whether in and across the streets of the city of Troy or

otherwise located, was at the time such assessments were made, and is now, exempt from assessment for the purpose of taxation in the city of Troy and the County of Rensselaer to any amount in excess of the capital stock of the Troy Union Railroad Company which is and at all times has been $30,000. Such exemption was contracted for and agreed to by the City of Troy in and by a contract between that City and the Troy Union Railroad Company and other railroad companies then the holders and owners of the stock of said Troy Union Railroad Company, dated Dec. 3rd, 1852, under which contract the Troy Union Railroad Company acquired the right-of-way for its railroad and station and was by the City of Troy granted
368 the right to occupy and use some part of the streets of the City of the City for its railroad and station, and constructed the same. It has since such construction thereof maintained the same and has in all respects performed all it was required to perform in and by said contract and has earned and is entitled to all the benefits expressed in and secured by said contract, one of which was the exemption of the property which is the subject of the assessments above mentioned for the purposes of taxation in the City of Troy and the County of Rensselaer for any amount in excess of the capital stock of said Company, being the Troy Union Railroad Co., which has at all times been $30,000, at which amount it has been assessed by the City of Troy since said road and station were constructed, to within the last year or two. Such construction of said railroad and station and such performance of and compliance with the terms and conditions of said contract by the Troy Union Railroad Company were in reliance upon the exemption from assessment mentioned herein and by the performance of said contract the City of Troy is now barred and precluded from assessing the property which is the subject of the above mentioned assessments or permitting it to be done otherwise than in accordance with the terms of said contract.

The New York Central and Hudson River Railroad Company, therefore, requests and demands that said assessments, and each of them, be as to the New York Central and Hudson River Railroad Co., cancelled; or The New York Central & Hudson River Railroad Co., requests that said assessments be changed as herein set forth and said valuations reduced to the sum of $30,000, in the aggregate, for the reasons herein set forth, as to the above mentioned assessments.

369 Sixth. That the assessment in the name of the New York Central and Hudson River Railroad Co., as follows:

Ninth Ward. 'L. 116, 118, 120, 122, 124, 126, 128, and W. Pt., 130, 132, 134, 136, 138, 140, 142 144, 146, 148, E. Side River St., and W. Pt., 115, 117 119, 121 and 123, W. S. First St., W. of Union R. R. and 3 ac., 3 rods, 37.6 perches of land and 2 sto. Br. Bldg., N. side Madison in 9th and 12th Wards,

Valuation ..... $68,000,'

is excessive and unjust and largely in excess of the rate which is applied to adjoining property and your petitioner respectfully asks that it be reduced to $40,000, or such less sum as shall correspond with the proportion of percentage of such full value as is applied, or placed upon property generally throughout your said city.

Seventh. The New York Central and Hudson River Railroad Company complains of the assessment and valuation placed against it as follows:

Eleventh Ward. Lot of land Bd., N. by Adams St., E. by the alley bet. 1st and River Sts., S. by Poestenkill Cr., and lands of Ludlow Valve Co. (excepting Lot 85 S. S. Ida St.), with Fft. and Engine House,

Valuation ..... $225,000,'

is excessive and unjust and very much out of proportion of values placed upon other commercial properties of the same intrinsic value. Your petitioner asks that the same assessment be reduced to not to exceed $140,000, or such less sum as shall compare with the proportion or percentage of full value as is applied to other property in your said City. That the assessment upon this property has been, for several years last past, at a valuation in excess of its full and true value, and that the improvements made thereon during the past year are
370 less than the amount added to the asesment of 1910, and that an increase in valuation by reason of the said improvements in the sum of $10,000, would be ample.

Eighth. That assessments generally against your petitioner are made at full value or in excess of the full value, whereas assessments of other property in your said City are made not to exceed sixty or seventy per centum of such full and true value, and your petitioner asks a corresponding reduction in all of its said real estate.

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
By F. F. WENDELL, *Land and Tax Agent.*

Dated, Fort Plain, N. Y., July 20, 1911.

STATE OF NEW YORK,
County of Montgomery, ss:

Fred F. Wendell, of said County, being duly sworn, says, that he is Land and Tax Agent of the New York Central and Hudson River Railroad Company, the petitioner herein, and as such has charge of matters relative to the assessment of and payment of taxes levied against the property of said petitioner; that he has read the foregoing petition and knows the contents thereof, and that the same are true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

FRED F. WENDELL.

Subscribed and sworn to before me this 20th day of July, 1911.
A. C. WAGNER,
Notary Public."

371 Mr. Wellington: I want to offer in evidence the protest of the Troy Union Railroad Company, filed with the assessors of the city of Troy on grievance day, when they sat to hear grievances, relating to the assessment in question for the year 1911.
The following is a copy of the same:

"Before the Board of Assessors of the City of Troy, N. Y.

In the Matter of the Application of the TROY UNION RAILROAD COMPANY to Strike from the Assessment-roll of the City of Troy, N. Y., Certain Property Assessed against It in the Third Ward of said City at $1,000,000 for the Year 1911 or to Reduce said Assessment.

To the Board of Assessors of the City of Troy, N. Y.:

The Troy Union Railroad Company hereby complains of and objects to the assessment made against it by your Honorable Board in the Third Ward of the City of Troy, which assessment appears on the assessment roll of said Third Ward for the year 1911 as follows:
'Troy Union Railroad Company.
The Boston and Maine Railroad Company.
Delaware & Hudson Company, the lands of road-bed.
372 New York Central and Hudson River Railroad Company, the lands of road-bed and adjacent thereto in the several wards of the city, with rails, superstructures, depot, buildings and appurtenances, being all of the railroad property in the city of Troy located between Madison street on the south, Hoosick street on the north and the approach of the Delaware & Hudson Company's bridge on the west, excepting that portion assessed as franchise lying in public streets, $1,000,000,' and bases its complaint, objection and request upon the following grounds:
That the Troy Union Railroad Company is a domestic corporation incorporated under and by virtue of the Laws of the State of New York.
That the property above described is the property of the Troy Union Railroad Company and is not the property of the Boston and Maine Railroad, the Delaware & Hudson Company and the New York Central and Hudson River Railroad Company, and none of said companies except the Troy Union Railroad Company has an interest in said property as an owner thereof, except such interest as they have as stockholders of the Troy Union Railroad Company, and for this reason the said assessment is illegal and improper in form and substance.
That said companies have no interest in said company which is subject to taxation by the assessors of the city of Troy, as owners or otherwise, except the Troy Union Railroad Company.
That the said assessment is illegal because that said Board of Assessors in said assessment has not as required by law designated the

owners, occupants and property rights of the several com
373 panies against which assessment is levied and the manner
levying said assessment is illegal, erroneous and unlawful.

That the said assessment is erroneous, illegal, unlawful and exc
sive for the reason that the Laws of the State of New York lim
the amount at which the property above described can be valu
for the purpose of taxation, said property being the Troy Union Ra
road Company and no others.

That the Troy Union Railroad Company and the city of Tr
executed in December, 1852, a contract exempting said proper
from taxation beyond the amount of the capital stock of said Tr
Union Railroad Company which is now and always has been $3
000.

That by the Laws of the State of New York heretofore enact
and now in force it is provided that the total assessment of t
property of the Troy Union Railroad Company of every name a
nature for the purpose of taxation shall not exceed the amount
the capital stock of said company which is now and always h
been $30,000.

That the said contract and the said Laws of the State of Ne
York are binding upon the city of Troy in the levying of sa
assessment and could not be impaired by any subsequent legislati
and that any Act thereafter passed affecting the said contract
repealing or attempting to repeal said laws of the State of New Yo
was unconstitutional, illegal and void.

That the amount of taxable property assessed in excess of t
said sum of $30,000 upon any property whatever belonging to t
Troy Union Railroad Company by your Board or any other Boa
of the City, County or State officers having charge of the assessme
of said property is illegal and void for the reasons heretofore a
hereafter stated.

374 That the said State Board of Tax Commissioners of t
State of New York have assessed part of said property
special franchises at the sum of $215,400, and that the said proper
above described has been included by the State Board of Tax Co
missioners within the said special franchise assessment as part
the tangible property therein assessed, and said assessment for t
year 1911 of the said property by the Board of Assessors of the Ci
of Troy is illegal and void because the said assessment herein is
double assessment, the same property above described being i
cluded in the assessment made by your Board and the taxab
property included in the said special franchise valuation, and s
assessment of said proptery would result in double taxation.

That the said assessment and valuation is illegal, erroneous a
excessive for the reason that it is unequal in that it has been ma
at a higher proportionate valuation than the assessment of any a
all other real estate in the City of Troy, and in that it has be
made at what purports to be its full value, whereas all other prope
in the City of Troy is assessed at much less than its full value,
this company is informed and believes.

That the Troy Union Railroad Company hereby offers to prove in such manner as your Honorable Board may determine the allegations incorporated in the foregoing complaint and objections.

TROY UNION RAILROAD COMPANY.
By F. A. RICHARDSON,
Supervisor and Agent.

375 STATE OF NEW YORK,
County of Rensselaer, City of Troy, ss:

Fred A. Richardson, being duly sworn, deposes and says that he is Supervisor and Agent for the Troy Union Railroad Company; that he has read the foregoing complaint and objections and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true. He further says that this verification is made by him and not by the Troy Union Railroad Company for the reason that said company is a corporation and that he is Supervisor and Agent thereof; that he has charge of the matters relating to taxation of the said company and in that capacity has knowledge of the facts stated therein; that he has been duly authorized by said company to verify and present the foregoing petition.

FRED A. RICHARDSON.

Sworn to before me this 21st day of July, 1911.

M. L. MURRAY,
Commissioner of Deeds, Troy, N. Y."

Mr. Wellington: Now I offer in evidence the assessment made for the year 1911, and I should like to have that copied into the record. I have a certified copy of it here, or what purports to be a certified copy.

Following is a copy of the same:

"Troy Union Railroad Co., Boston and Maine Railroad Co., Delaware and Hudson Railroad Co., New York Central and Hudson River Railroad Co.,

376 The lands of roadbed and adjacent thereto in the several wards of the City, with rails, superstructures, depot buildings and appurtenances, being all the railroad property in the City of Troy, located between Madison St. on the south, Hosick St. on the north, and the approach of the Delaware and Hudson Company's bridge on the west, excepting that portion assessed as franchises lying in public Streets. (Valuation $1,000,000) (Real property) Special franchise, 1911. $215,400."

Mr. Wellington: I also offer in evidence a mortgage executed by the Troy & Boston Railroad Company to E. Thompson Gale and another, recorded in book 147 of Mortgages, at page 524, November 5, 1874, in Rensselaer County Clerk's office. This mortgage was given to secure an issue of bonds amounting to $1,500,000, and that portion of the mortgage to which I desire the Court's attention

directed reads, in the description of the property mortgaged, in part, as follows:

"Also all its rights, title, interest and franchises in the Troy Union Railroad, and its appurtenances, and in the property of the Troy Union Railroad Company."

I also offer in evidence a mortgage executed by the Rensselaer & Saratoga Railroad Company to Joseph M. Warren and others recorded in Rensselaer County Clerk's office August 5, 1871, in Book 129 of Mortgages, at page 537; given to secure an issue of $2,000,000 of bonds. And in the description of the property mortgaged the following occurs:

"Also all the interest of said party of the first part in the Troy Union Railroad Company and in the stock and property of said company, and all its rights to use the property of said company."

Mr. Carr: Why not have it entered on the minutes that
377 counsel for the relators have the right to refer to any parts of these mortgages which are not specifically mentioned in the record. That will save copying the long documents. We may find something we want to bring to the attention of the Referee. I want to reserve that right.

Mr. Wellington: Certainly. I offer in evidence Chapter 201 of the Laws of 1909, entitled "An act to repeal Chapter 462 of the Laws of 1853, entitled 'An act providing for the taxation of the property of the Union Railroad Company in Troy,' passed June 24, 1853. Became a law April 17, 1909, with the approval of the Governor. Passed three-fifths being present. Accepted by the City."

The following is a copy:

"Chap. 201.

An Act to Repeal Chapter Four Hundred and Sixty-two of the Laws of Eighteen Hundred and Fifty-three, Entitled "An Act Providing for the Taxation of the Property of the Union Railroad Company in Troy," Passed June Twenty-fourth, Eighteen Hundred and Fifty-three.

Became a law April 17, 1909, with the approval of the Governor. Passed, three-fifths being present. Accepted by the City.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter four hundred and sixty-two of the laws of eighteen hundred and fifty-three, entitled "An Act providing for the taxation of the property of the Union Railroad Company in
378 Troy," passed June twenty-fourth, eighteen hundred and fifty-three, is hereby repealed.

Section 2. This act is not retroactive and shall not be held to apply to or to affect any litigation pending at the time it becomes a law.

Section 3. This act shal- take effect immediately."

Mr. Wellington: Now I offer in evidence the abstract of conveyances to the Troy Union Railroad Company, and the official search which I have here was one that was used before. I have a copy of it here.

This was received in evidence.

It already appears in the case of the relator and therefore is not reproduced here.

Mr. Wellington: I now offer in evidence the assessment against the Troy Union Railroad Company made by the assessors of the City of Troy for the year 1907. Also the assessment made against the New York Central & Hudson River Railroad Company by the assessors of the City of Troy for the year 1907.

Mr. Carr: We object to that evidence on the ground that it is immaterial and irrelevant to the matter that is here because it already appears that the exemption act that existed in 1907 was repealed by the act of 1909.

The Referee: I will reserve decision on the objection until I get a little more familiar with the case.

Mr. Wellington: I now offer in evidence the petition, writ of certiorari, return, order of reference, findings of the referee, stipulation and order dismissing writ, entered in Rensselaer County Clerk's office in the proceedings brought to review the assessment for the year 1907 levied against the Troy Union Railroad Company.

379 Mr. Carr: That is objected to on the same grounds, the whole batch of papers.

The Referee: The same ruling on that objection.

Mr. Wellington: I offer in evidence the petition, writ of certiorari, return, order of reference, findings of the referee, stipulation and order dismissing writ, entered in the Rensselaer County Clerk's office in the proce-dings brought by the New York Central & Hudson River Railroad Company to review the assessment levied against it for the year 1907.

Mr. Carr: Objected to on the same grounds.

The Referee: Decision reserved.

Mr. Wellington: I offer in evidence the memorandum signed by counsel for the various railroad companies interested, preceding the stipulations and orders dismissing the writs to review the 1907 assessment as follows: "Memorandum of agreement and litigation hereto pending between the various railroads entering the City of Troy and the City of Troy respecting matters of taxation having been adjusted, it is further agreed that the railroads interested in said litigation shall pay to the City of Troy $353.50 for one-half of the amount paid by the City of Troy as disbursements (referee's and stenographer's fees) in certiorari proceedings.

The railroad companies shall pay all back taxes due, with four per cent interest to the date of payment, and in addition thereto all disbursements made by the City of Troy for advertising tax redemption notices excepting, however, that the taxes levied upon

assessments for special franchises for the years 1901 to 1908, both
inclusive, shall not be paid, orders having been entered va-
380 cating such assessments. Tax sales certificates to be can-
celled.

Dated May 11, 1910.

LEWIS E. CARR,
Atty. for D. & H. Co.
HARRIS & RUDD,
Attys. for Rel. N. Y. C. & H. R. R. Co.
JARVIS P. O'BRIEN,
Attorney for Relator Boston & Maine Railroad Company.
G. B. WELLINGTON,
Cor. Counsel and Atty. for the City of Troy."

Mr. Wellington: I offer in evidence the proce-dings whereby the New York Central Railroad Company, a separate company, and the Hudson River Railroad Company, a separate company, *and the Hudson River Railroad Company, a separate company*, came to be consolidated into the New York Central & Hudson River Railroad Company, the relator herein, and either party may refer to certified copies of the same on the argument without having the same spread upon the minutes.

Mr. Wellington: I want this added to the record. I suggest that it be stipulated that the Troy & Boston Railroad became merged with the Fitchburg Railroad, which in turn became the property of the Boston & Maine Railroad Company. It was so stipulated.

I want to offer in evidence an ordinance passed by the city of Troy October 11, 1852, authorizing the issuance of the bonds of the city of Troy.

Received, and the following is a copy of the same:

381 "At a Special Meeting of the Common Council of the City of
Troy, Held Oct. 11, 1852.

Present: Hon. George Gould, Mayor; Hon. — Robertson, Recorder and Aldermen Ager, Avery, Bolton, Bosworth, Cooper, Davis, Eddy, Edwards, Forsyth, Halsted, Ingram, Starbuck, Simmons.

The Mayor stated that the object of this special meeting of the Common Council was to consider the report of the Commissioners appointed under an Act of the Legislature of the State to locate a Railroad track through the City, and to take action thereon.

Hon. David Buel, jr., from a majority of said Commissioners, then presented their report with accompanying map, showing the route through the City selected by them for the Troy Union Railroad. Judge Buel also made a verbal statement of the reasons that had influenced the majority of the Commissioners in locating said Railroad as set forth on the map.

The Recorder then offered the following Preamble and Resolutions:

Whereas, Under and in pursuance of an act of the legislature

the State of New York, passed June 20th, 1851, to provide for the construction of a railroad through the whole, or some part of the City of Troy, a corporation has been duly organized for the purpose aforesaid under the name and style of "The Troy Union Railroad Company," and

Whereas, the Commissioners in and by said act appointed and authorized to locate such railroad (subject to the approval of a majority of all the members elected to the Common Council of the city of Troy) have, by a majority of their whole number, made such location and have presented to this Common Council, for its approval, such their location, with a map of the same.

382 Now, Therefore, be it resolved, by the Common Council of the City of Troy, that such location of the said railroad be, and it hereby is, by a majority of all the members elected to said Common Council, that is to say, by the votes of Hon. George Gould, Mayor; Hon. G. Robertson, jr., Recorder, and by Aldermen Ager, Avery, Bolton, Bosworth, Cooper, Davis, Eddy, Edwards, Forsyth, Halsted, Ingram, Starbuck, and Simmons, being fifteen members of the Common Council, all the members elected to which are eighteen in number approved and the construction of such railroad on such location allowed; provided that such railroad by proper culverts or bridges, be constructed under Ferry, Congress, Hutton and Hoosick street- in such manner as shall be approved by the Common Council of this city; and provided further, that when said railroad is ready for operating, any and all other railroad tracks now lying in said City between Federal and Adams streets shall be forthwith taken up and removed: but above Federal street and below Adams street, the Troy and Greenbush Railroad Association and its lessees, shall have the right to have and use such tracks as may be necessary to the use and enjoyments of their rights and property; and

Whereas, The said act further authorizes the corporation of said City of Troy to borrow upon the bonds of said City redeemable in not more than twenty years, at an annual interest of six per cent, a sum not exceeding the cost of the construction of such railroad; Now, therefore, be it further

Resolved, by the Common Council of the City of Troy, That when, and as soon as the corporation of said City shall be, according to the provisions of said act by mortgage of said railroad, and by the contracts of the railroad corporations subscribing for the 383 stock of said Troy Union Railroad Company the contracts and mortgage to be approved by the Common Council, fully indemnified and made harmless against the payment of any bonds (and the interest thereon) which said City of Troy may issue under the authority of said act; the Mayor and Chamberlain of said City may and shall, at such time or times as may in the judgment of the committee named in the next resolution be necessary to raise the moneys required for the construction of such railroad, issue the bonds of the City of Troy under the seal of said City and signed by said Mayor and Chamberlain, in sums of not less than one thousand dollars each, bearing interest at the rate of six per cent per annum,

with coupons attached, for the semi-annual payment of such interest and making both principal and interest payable at some bank in the City of New York; the time of the running of such bonds to be as provided in said act, not more than twenty years.

Resolved, That George Gould, Esq., David Buel, jr., and Daniel Southwick, be, and they thereby are made a committee with power and authority to negotiate and contract with proper and responsible parties for the raising upon such bonds of the moneys required for the construction of said railroad.

The Preamble and Resolutions were adopted by the following vote:

Ayes—Recorder, Ager, Avery, Bolton, Bosworth, Cooper, Davis, Eddy, Edwards, Forsyth, Halsted, Ingram, Starbuck, Simmons, Mayor—15.

Noes—None."

Mr. Wellington: I have here a certified copy of the petition, order and writ of certiorari for the year 1907, that was offered in evidence the other day when I didn't have the copy. I have also a certified copy of the return on the order appointing a referee
384 and of the referee's findings of fact and conclusions of law filed in the Rensselaer County Clerk's office, and of the stipulation and order and notice of entry. Those were all offered the other day and decision on them was reserved.

Defendants rest.

Mr. Carr: In view of the memorandum that was put in evidence by the counsel for the defendants at the last hearing, we have concluded it is proper that there should be put in on the part of the relator a history of the transaction leading up to that memorandum. So if you will swear me, I will furnish the evidence on that subject.

Lewis E. Carr, sworn for the relator, testified as follows:

In the year 1901 the State Board of Tax Commissioners imposed an assessment upon the special franchises of the Troy Union Railroad Company in the city of Troy, of $60,000. I filed objection with the State Board of Tax Commissioners to that assessment on the ground that the company was exempted from taxation beyond $30,000. The objection was overruled and the assessment was certified to the city of Troy and was entered on the assessment roll. A writ of certiorari was taken out to review that assessment. The same thing occurred in 1902, 1903, 1904, 1905 and 1906. In each year objections were filed to the assessments made by the State Board of Tax Commissioners and they were overruled and the assessments certified to the city. Writs of certiorari were taken out to review all
385 those assessments except for the year 1905. For some reason that I am not able to explain a writ of certiorari was not taken out that year, but only for the other years. The hearing on the first writ that was taken out was delayed, awaiting the decision on the questions raised as to the validity of the special franchise tax act. In 1907 the assessors of the city of Troy imposed an assessment upon

the property of the Troy Union Railroad Company in the city of Troy in the aggregate of one million dollars.

Mr. Wellington: I object to that as not the best evidence. That assessment you know, Mr. Carr, wasn't in that form. It was not an assessment against the Troy Union.

The Witness: I am not saying that it was against the Troy Union. The assessment was in the aggregate one million dollars and it was an assessment against the New York Central & Hudson River Railroad Company, the Delaware & Hudson Company, the Boston & Maine Railroad and the Troy Union, which made up the aggregate of one million dollars.

The Referee: Have you any objection to the statement in that form?

Mr. Wellington: No, that is all right.

The Witness: Now for the purpose of having it absolutely correct I would like to put in evidence the form of that assessment which was made that year; I have copied it from the assessment books.

Mr. Wellington: It is in evidence, Mr. Carr; it is in the papers already offered.

The Witness: Objections were made by all of the companies to that assessment; they were overruled and the assessment went
386 into the assessment roll and the tax was levied upon it. A writ of certiorari was taken out to review that assessment. In the years 1908 and 1909 similar assessments were made by the assessors of the city of Troy. Objections were filed to those assessments; they were overruled and writs of certiorari were taken out to review those assessments. The 1907 case was referred to Mr. Kelly to take the proof and report to the Court. Proof was taken in that case. His report was made, and the matter was argued before Justice Fitts in the month of May of the year in which he died; he died in the following December. He had not decided the case at the time of his death. Negotiations were had between the representative of the city of Troy and myself and the counsel representing the other roads, the result of which appears in the memorandum that has been put in evidence. It was that the assessments made against the Troy Union Railroad Company from the year 1901 to the year 1908, both years inclusive, by the State Board of Tax Commissioners for special franchises should be cancelled; it was that the writs of certiorari for the review of the assessments for the years 1907, 1908 and 1909 should be quashed. The taxes were paid in accordance with this memorandum that has been put in. In the year 1909 an act was passed which repealed, or attempted to repeal the exemption contained in the act of 1853. That is the history of the litigation leading up to the memorandum that was put in evidence. I don't know that it is needful to cumber up the record with these stipulations, but if it is, why, we will put them in. I didn't bring them up to put them in.

Mr. Wellington: They are in here.

The Witness: That is only the one year. I mean covering
387 all the years, and the orders. Then it can be noted that stipulations and orders were entered disposing of the writs of certiorari in accordance with what appears.

Mr. Visscher: Similar stipulations were entered into for 1908 and 1909, and the orders were entered on them.

The Witness: The assessment made by the assessors of the city of Troy for the year 1910 was objected to by the different companies and writs of certiorari were taken out by the companies to review the assessment, which writs are now pending, and the assessment in the year is substantially the same as the one made in 1911.

I want to put in the record the exceptions we filed to the finding of Referee Kelly in that matter, referred to here today with a statement of the date of filing them.

It is understood and agreed by the parties hereto that either party may refer to the papers introduced relative to the assessments of 1907, 1908 and 1909, their review and final disposition, so far as they have not been reproduced in this record, without being so reproduced.

Mr. Carr: I offer in evidence the report of the Committee of the Common Council of the city of Troy in the year 1858 to negotiate a settlement of the difficulties then existing between the city of Troy and the Troy Union and its constituent companies. That report was made to the common Council October 7th, 1858. It is offered to explain to some extent at least some of the provisions of the reformed agreement of 1858.

The same was received in evidence.

388 The following is a copy:

City of Troy Common Council Proceedings.

Thursday, Evening, October 7, 1858.

Regular Meeting.

Members present: Hon. Arba Read, Mayor; Hon. Clarence Buel, Recorder; Alderman Anthony, Alderman Archibald, Alderman Avery, Alderman Birdsall, Alderman Blanchard, Alderman Campion, Alderman Cary, Alderman Coleman, Alderman Fales, Alderman Green, Alderman Haight, Alderman McConihe, Alderman Mc Alderman Norton, Alderman Harvey Smith, Alderman Leonard Smith, Alderman Tibbits, Alderman Van Alstyne.

The Report of the Mayor, from the special Committee appointed on the 23d of March, 1858, "to negotiate a settlement of the difficulties now existing between the city and the roads composing the Union Railroad Company," presented to the Common Council of the city of Troy, Oct. 7th, 1858, to the Honorable Common Council of the city of Troy:

GENTLEMEN: The subscribers having been appointed a committee of your Honorable Board, by a resolution passed the 23d day of March, 1858, to "negotiate a settlement of the difficulties now existing between the city and the roads composing the Union Railroad Company, and to report their proceedings to this board," respectfully report:

That under the resolution conferring that power, they obtained the assistance of John P. Albertson, Esq., and the Hon. David
589 L. Seymour; and with the committee thus enlarged, they at once entered on the duties entrusted to them, and have been occupied ever since in efforts to accomplish the wishes of the Common Council.

Your committee commenced by giving notice of their appointment to each of the Railroad Companies, and requesting a delegation from each to meet them separately and confer with them on the subject of a settlement. They were able, by this course to ascertain the individual views of each company; the objections of each to a settlement; and the ends to be attained by each in effecting such settlement. At successive interviews with the representatives of the several Roads, your committee became acquainted with the claims and demands of each; and also ascertained what concessions could be obtained from each, to effect a settlement with them. This separate negotiation was necessary in consequence of the difficulties which had arisen among the several Roads; and although it added to our labors, and protracted our negotiations, it has doubtless been the means of attaining the end to which we have arrived.

In the commencement of their labors, your committee found that no amicable settlement could be effected with the city, unless it included a settlement of all the difficulties existing between the Roads under the old contract. They found that the old contract was unequal and burdensome in its practical workings, and had a direct tendency to defeat the great object the city had in view, in loaning her credit for the construction of the Union Railroad; that the arrangement for paying the debt incurred for the construction of the Road, with the interest thereon, and the bridge tolls and running expenses for operating the Road according, to use, was, in fact, preventing its use, and inducing the Roads to use it as little as possible; and that thus, while the city had assumed the responsibility
590 of a heavy debt, to bring business into the city, she had allowed the Roads to enter into an arrangement practically to drive it away. Your committee found, from the intimate connection of the city with the old contract, that a settlement of the city debt necessarily included a settlement of all the vexed questions connected with running and operating the Road, and with the bridge tolls, which were also a source of complaint and dissatisfaction with several of the parties; and that no arrangement of the debt could be secured, unless these difficulties could be finally disposed of. Your committee have therefore been obliged, in carrying out the instructions of the Common Council, to attempt a settlement of all the difficulties existing between the several Roads, as well as that between the

Roads and the city; and their time has been almost wholly engro
with the subject until now.

Your committee have at times been disposed to abandon the whol
subject, and to give up the negotiation in despair; but its importanc
to the business interests of the city, and the future prospects of he
taxpaying inhabitants, have encouraged them to persevere, and t
struggle against every obstacle that opposed them. The result o
their negotiations, the committee are happy to say, is the consent o
the several Roads to an agreement for the settlement of the whol
matter, and an amicable arrangement of all questions which hav
been in dispute between the parties. By mutual consent the partie
have agreed to enter into a new contract which provides that the fou
Roads shall use the Union Railroad in common; that the bridg
tolls shall remain fixed at $11,500 per annum; that each of the fou
Roads shall pay one-fourth of the bridge tolls, and one-fourth par
of the running expenses for maintaining and operating the Road
that any Road hereafter coming into the city, is to be admitte
391 to the same privileges as the present Roads, on payment o
its proportion of the original debt, and assuming its propor
tional share of running expenses, and of bridge tolls, which are t
remain as now fixed. A copy of this contract is herewith presente
to the Common Council for its approval, which is necessary to giv
it validity.

With regard to the city debt, the Roads have made the followin
propositions, each for itself, and for its share of the debt:

The Central Railroad Company agrees to pay $170,000, or on
quarter of the original debt, with interest at six per cent. from th
1st of January, 1858. The Hudson River Railroad Company agree
to pay the like sum of $170,000 with 6 per cent. interest, from th
1st day of January, 1858. The Rensselaer & Saratoga Railroad Com
pany agrees to pay $125,000 in full of its share of the debt, with
per cent. interest from the 1st day of July, 1858. And the Troy an
Boston Railroad Company agrees to pay $100,000 in full of its shar
of the debt, with three per cent. interest on that sum from the 1s
day of January, 1859. Each Company proposes to give its bond o
obligation to the city for the amount assumed by it, and to give th
city a separate right of action against any one Road, on its failure t
meet its engagements. A copy of the bond to be executed by eac
Company to the city, is herewith presented to the Common Counc
for its approval, if this whole settlement is sanctioned by your Ho
orable Board. It is due to the Rensselaer & Saratoga, and the Tro
and Boston Railroad Companies, to say that they claim a deductio
from their share of the original debt, on the ground that they assum
each, a much larger share of bridge tolls and running expenses, tha
would have belonged to them, to pay, under the old contrac
392 and that they have so assumed this liability, to enable you
committee to effect a settlement with the other Roads, bo
of which refused to assume more than one-fourth of these expenses.

Your committee find that the original debt assumed by the ci
amounts to $680,000. Of this the four Roads propose to pa
$565,000, leaving to be provided for by the city, the sum

$115,000—but as the city bonds have yet a number of years to run, your committee believe that a small annual sinking fund, and the interest on the instalments to be paid to the city, will provide for this deficiency without imposing any heavy burden on the citizens of Troy.

In addition to the above, the Central, and the Hudson River Railroad Companies each agrees to assume a portion of the back interest, amounting in the aggregate to more than $30,000 as their share of moneys which the city has already paid for the Union Railroad Co. The other two roads do not offer to pay any portion of this back interest. Your committee are informed by the Chamberlain that the amount paid by the city on account of the Union Railroad is $99,650.15. Of this sum, $68,000 has been borrowed by the city on bonds becoming due in 1862, and the residue has been paid from the funds of the city.

The Troy and Boston Road proposes as a condition of settlement, that the city shall consent to her crossing certain streets below Adams street; or crossing River street and Federal street, to enable her to obtain access to the Hudson River with her freight. Serious objections have heretofore been urged by the owners of property adjoining, to the use of Adams street for this purpose, and your committee are of opinion that these objections are entitled to respectful consideration. To obviate these objections the Company propose to
393 purchase the right of way to the River, with permission of the city to cross the streets and alleys below Adams and west of First streets, or to cross River street and Federal street to the dock. Your committee believe that the interests of the city as well as of the Road, require such facilities as are asked, and that none of our citizens will object to any reasonable provisions for this object, which do not interfere with private rights, and therefore recommend a compliance with their request.

Your committee have thus presented to the Common Council the result of their labors. The arrangement which is now proposed, will, it is believed, remove most, if not all of the obstacles, which have hitherto existed, to the successful and amicable operation of the Union Railroad. It will make the Road practically free to all the business that may find its way here, instead of imposing a heavy toll on that business; and will induce the Roads to use it at all times, when their interest or convenience requires, without feeling that for all the Troy business, they must pay a heavy tax. It will give the city a separate claim against each Road for its share of the debt assumed; and a certain and speedy remedy against any Road failing to meet its engagements. It retains for the city all the rights and securities which she had under the original mortgage; and we believe it will at once relieve the city from the necessity of raising a large sum annually for the payment of interest on the debt. Should this arrangement be completed, your committee believe that it will place the indebtedness of the city, in a position as favorable as that of any city in the State.

Your committee would recommend in case of the acceptance of this settlement that a Commission should be appointed to establish

and manage a sinking fund for the ultimate extinguishment
394 of the Union Railroad debt. The appropriations of the city for this object, and the payment by the Roads, of the installments as they become due, may place in the hands of such a Commission a sum of money from which a large amount of interest might eventually be realized, toward paying the deficiency assumed by the city. Your committee have labored earnestly and faithfully to accomplish this result, and they have been unanimous in the conclusions to which they have arrived on every question that came before them. From the beginning they have had but one object in view, and that has been to effect the best possible settlement for the interests of the city; and to secure as much of the debt for which the city was liable, as was possible. They regret that they have not been able to accomplish more, and secure the whole debt; but a settlement on the above basis is the very best they have been able to effect. If the result of their labors shall meet the approval of their fellow-citizens they will feel themselves amply compensated for their exertions. And they confidently rely on the wisdom of the Common Council and the good sense of their fellow-citizens to approve their acts, as securing the best settlement that could be effected under existing circumstances.

Troy, Oct. 7, 1858.

ARBA READ.
JON. EDWARDS.
T. SYMONDS.
JOHN P. ALBERTSON.

Evidence closed.

The case was thereafter submitted to the referee for decision.

395 *Referee's Report.*

Supreme Court.

THE PEOPLE ex Rel. NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY

against

G. FRANK MEALY and OTHERS, as Assessors of the City of Troy, and Hiram W. Gordinier, as Comptroller of the City of Troy, N. Y.

To the Supreme Court:

I, Joseph A. Lawson, referee appointed by the court in the above-entitled proceeding, report to the court that the annexed is a true transcript of the evidence taken herein—the relator being represented by William L. Visscher, Esq., and by Lewis E. Carr, Esq., as counsel; and the defendants by Charles I. Webster, Esq., corporation counsel, and by G. B. Wellington, Esq., as counsel; and I, said referee pursuant to section 293 of the Tax Law, make the following findings of fact and conclusions of law, to wit:

Facts.

1. Chapter 255 of the Laws of 1851 was passed by the Legislature of the State of New York, June 20, 1851, and duly became a law that year. Said statute is as follows, to wit:

396 "An Act to Authorize the City of Troy and Certain Railroad Corporations to Subscribe for and Become the Owners of Stock for the Construction of a Railroad Through the Whole or Some Portion of the City of Troy, Passed June 20, 1851, Three-fifths Being Present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Sec. 1. The corporation of the City of Troy, and the several railroad corporations whose railroads now or hereafter shall come to the City of Troy, or which have or shall have their business terminus in, or run their trains to and from said city, may subscribe for and become the owners of stock in a railroad corporation to be organized under the act entitled, 'An act to authorize the formation of railroad corporations and to regulate the same," passed April second, one thousand eight hundred and fifty, for the construction of a railroad, with one or more tracks, through the whole or a portion of said City; but there shall not be more than one railroad through that part of the City of Troy lying between Adams and Federal streets. The corporation of the City of Troy shall not subscribe for or take more than one-fourth part of the capital stock of the corporation to be organized.

Sec. 2. The corporation of the City of Troy is hereby authorized to borrow, upon the bonds of said City, redeemable in not more than twenty years, at an annual interest of six per cent. a sum not exceeding the cost of the construction of such railroad; but no bonds shall be issued therefor by the corporation of said City until said corporation shall, by the several railroad corporations which are authorized to subscribe for stock by the first section of this Act, and
397 also by a mortgage on the railroad so to be constructed, its capital stock and franchises, be fully indemnified and made harmless against the payment of any bonds and the interest which said City of Troy may issue under the authority of this act.

Sec. 3. All railroads which now or hereafter shall have their trains running from the City of Troy may, on equal terms and with equal privileges, use the railroad track or tracks hereby authorized to be constructed, and shall be entitled to at least two directors in said railroad corporation, who shall be residents of the City of Troy.

Sec. 4. Jonas C. Heartt, Elias Plum, Joseph M. Warren, Hiram Slocum, Le Grand B. Cannon, Isaac McConihe, Russell Sage, David Buel, junior, and Thomas Symonds, shall be commissioners to obtain subscriptions to the capital stock in the railroad corporation hereby authorized, and shall, by a majority of their number, be empowered to locate such railroad, subject to the approval of a majority

of all the members elected to the common council of the City of Troy and in case of the death or refusal to act of any of said commissioners the common council of said City shall fill such vacancy."

2. July 21, 1851, the Troy Union Railroad was incorporated under the General Railroad Law of 1850 by the due filing of a certificate of incorporation. The capital stock was fixed at $30,000, consisting of three hundred shares, of the par value of $100 each. Its corporate existence was to be one hundred years. Its purpose was to construct, operate and maintain a railroad for the conveyance of persons and property, pursuant to the General Railroad Law of 1850,
398 in or through a portion of the City of Troy, with one or more tracks, etc. For the provisions of said certificate of incorporation reference is made to said certificate introduced and received in evidence and a part of the record.

3. Chapter 462 of the Laws of 1853 was passed by the Legislature of the State of New York in the year 1853, and duly became a law in June, 1853. It reads as follows:

"An Act Providing for the Taxation of the Property of the Union Railroad Company in Troy, Passed June 24, 1853, Three-fifths Being Present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. For the purposes of taxation in the City of Troy, and in the County of Rensselaer, the property, of the Troy Union Railroad Company shall be estimated and assessed (as the common council of said City of Troy, by its contract with said Company, dated December third, eighteen hundred and fifty-two, agreed that the same should be) at the amount of the capital stock of said Company, and no more; and (as agreed in the said contract) the bridge of the Rensselaer and Saratoga Railroad Company over the Hudson river at Troy shall, for the purpose of taxation, not be estimated or assessed at any increased valuation by reason of the addition thereto, agreed for in said contract.

§ 2. This act shall take effect immediately."

4. The assessment made by said G. Frank Mealy, George Spence, Jr., George B. Walker and Silas Downs, Jr., General Assessors of the city of Troy, a municipal corporation, being a city of the second class, for the purpose of taxation—which said assessment was
399 made in the year 1911, and of which said assessment the relator complains in this proceeding—appears upon said Assessors' books as follows:

"Troy, Union Railroad Co., Boston and Maine Railroad Co., Delaware and Hudson Railroad Co., New York Central and Hudson River — Road Co.

The lands of roadbed and adjacent thereto in the several wards of the city, with rails, superstructures, depot buildings and appurtenances, being all the railroad property in the city of Troy located

between Madison St. on the south, Hoosick St. on the north, and the approach of the Delaware and Hudson Company's bridge on the west, excepting that portion assessed as franchises lying in public streets. (Valuation, $1,000,000.) (Real property).

Special franchise, 1911, $215,400."

5. All the real estate mentioned and described in said assessment was acquired in the name of the Troy Union Railroad Company prior to July 1, 1858, excepting two small parcels acquired in 1864, which were then valued, together, at $666; a small parcel between Congress and Ferry streets acquired in 1864, then valued at $333; a parcel acquired in 1866, then valued at $200, and a parcel acquired in 1887, then valued at $1,800.

6. In December, 1852, there was duly executed and delivered an agreement between the corporation of the city of Troy, said Troy Union Railroad Company, said Rensselaer & Saratoa Railroad Company, said Schenectady & Troy Railroad Company, said Hudson River Railroad Company, and said Troy & Boston Railroad Company, which was offered and received in evidence and is set forth in full in the record. For the provisions thereof reference is made to the record in this case without setting forth said agreement
400 in full in this finding.

Reference is also made to the survey referred to in said agreement, which said survey was offered and received in evidence and is a part of the record herein.

7. There was executed and delivered an instrument in writing dated July 1, 1858, duly executed by the corporation of the city of Troy, the Troy Union Railroad Company, the Rensselaer & Saratoga Railroad Company, New York Central Railroad Company and Hudson River Railroad Company and Troy & Boston Railroad Company, recorded December 2, 1858, in Rensse'aer County Clerk's Office in Book of Deeds 108, at page 279 et seq., which was offered and received in evidence and is a part of the record herein. Reference may be made to said record for the terms of said instrument as though the same were incorporated in full in this finding.

Reference may also be made to the survey referred to in said instrument, which said survey was offered and received in evidence and is a part of the record herein.

8. Chapter 201 of the Laws of 1909 was passed by the Legislature of the State of New York in that year, was duly accepted by The City of Troy and signed by the Governor of the State of New York, and became a law in the year 1909. It reads as follows:

"An Act to Repeal Chapter Four Hundred and Sixty-two of the Laws of Eighteen Hundred and Fifty-three, Entitled, 'An Act Providing for the Taxation of the Property of the Union Railroad Company in Troy,' Passed June Twenty-fourth, Eighteen Hundred and Fifty-three:

Became a law April 17, 1909, with the approval of the Governor. Passed, three-fifths being present.

Accepted by the city.

401 The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter four hundred and sixty-two of the laws of eighteen hundred and fifty-three, entitled, "An act providing for the taxation of the property of the Union Railroad Company in Troy," passed June twenty-fourth, eighteen hundred and fifty-three, is hereby repealed.

§ 2. This act is not retroactive and shall not be held to apply to or to affect any litigation pending at the time it becomes a law.

§ 3. This act shall take effect immediately."

9. July 21, 1911—which was one of the days on which complaints might be made to the Board of Assessors of the City of Troy with reference to assessments made by said Assessors—the relator herein filed with said Board of Assessors a written objection to the assessment hereinbefore in these findings set forth and complained of by the relator in this proceeding, which said protest was in due form, and for the contents thereof reference may be had to the record herein without setting forth said protest in full in this finding.

10. In and prior to the year 1852, the Troy & Greenbush Railroad had a terminus on River street at Adams street, but passengers were discharged somewhere between the foot of State street and the Troy house.

The steam cars of the Rensselaer & Saratoga Railroad Company stopped on Green Island, on the opposite side of the river from Troy, and passenger cars were brought by horses across the bridge down River street and stopped at the Troy house.

The Schenectady & Troy Railroad had a terminus on the Green Island side of the river opposite Troy, and its passenger cars

402 were drawn over by horses and came down River street to the then steamboat landing near the foot of State street.

The terminus of the Troy & Boston Railroad was on River street in front of the Mansion House. The passenger cars were drawn down by horses from Hoosick street.

There was at that time no Union Station in the city of Troy.

Prior to December 3, 1852, the road of the Troy & Greenbush Railroad Company was leased to, and thereafter operated by, the Hudson River Railroad Company.

Prior to July 1, 1858, the road of the Schenectady & Troy Railroad Company was leased to, and thereafter operated by, the New York Central Railroad Company.

11. Following the organization of the Troy Union Railroad Company and the execution of the contract dated December 3, 1852, the Troy Union Railroad Company acquired title to parcels of real estate in the city of Troy by purchase and also by condemnation proceedings. The dates of the acquiring of title to the various parcels are contained in the search offered and received in evidence herein, and for said dates reference is made to said search as though the same were incorporated in detail in this finding.

The Troy Union Railroad Company constructed a Union Station

and united the termini of the four railroad companies hereinbefore referred to in this report.

The city of Troy issued its bonds to the aggregate amount of $707,000, the proceeds from the sale of which were used by the Troy Union Railroad Company for the purchase of land in
403 question and the construction of the Union Railroad and station.

The Troy Union Railroad Company executed and delivered to the city of Troy a mortgage dated December 1, 1852, on its road, property and franchises to secure the payment of the principal and interest of said bonds, and the four railroad companies parties to the contract of December 3, 1852, executed and delivered to the city of Troy separate agreements by which they indemnified the city of Troy against any default of the Troy Union Railroad Company upon its mortgage to said city to the extent of one-fourth of the amount secured thereby, not, however, exceeding $125,000.

12. The proposed Union Railroad and station constructed by the Troy Union Railroad Company, as heretofore found, were completed on or before January 1, 1855, and were thereafter occupied by and used in common by the said Troy Union Railroad Company and by the four railroad companies whose several and respective railroads previously terminated as hereinbefore set forth, and by their successors. The former termini were thereupon given up.

13. By the contract of July 1, 1858, hereinbefore found, the contract dated December 3, 1852, was annulled.

14. No other contract or instrument relative to the Troy Union Railroad Company's railroad station or other property, or to the title thereto, or to any part thereof, was at any time after the execution of the contract dated July 1, 1858, executed. The parties to said contract dated July 1, 1858, did not thereafter act, or assume to act, under any other or different contract, and said contract dated
404 July 1, 1858, is the instrument under and in accordance with which the parties thereto have at all times acted relative to and in connection with said railroad station and other property and the maintenance and use thereof.

15. In 1871 the Rensselaer & Saratoga Railroad Company leased all its property and franchises to the President, Managers and Company of the Delaware & Hudson Canal Company, the name of which Company was by Chapter 469 of the Laws of 1899, changed to the Delaware & Hudson Company.

Subsequent to the execution of the contract dated July 1, 1858, and before the assessment complained of herein, the New York Central Railroad Company and the Hudson River Railroad Company consolidated and became the New York Central & Hudson River Railroad Company; the Troy & Boston Railroad Company was consolidated with the Fitchburgh Railroad Company and the railroad of such consolidated Company was leased to the Boston and Maine Railroad.

16. The mortgage given by the Troy Union Railroad Company to the city of Troy to secure the payment of the principal of and interest on the bonds issued by the city of Troy to provide money for the con-

struction of the railroad and station of that company, was fully paid prior to July 26, 1901, and on that day was discharged of record in the Rensselaer County Clerk's Office.

17. The Troy Union Railroad Company has since its organization in 1852 retained and continued its corporate existence, and was in the year 1911 a duly organized, existing and acting corporation, having legal right to acquire, hold and own real estate used and to be used for railroad purposes. Its capital stock has been at
405 all times since its organization, and at the time of the assessment complained of herein, was $30,000, and no more.

18. Each year since the organization of the Troy Union Railroad Company down through the year 1906, said Company has been assessed on the assessment-rolls of the city of Troy, for and upon its property therein, $30,000. No change was made in such assessment following the execution of the contract of July 1, 1858, nor was any attempt made by the city of Troy to make any change therein until the years 1886 and 1887, which attempt and its result are hereinafter found. Following such attempt to change such assessment in the years 1886 and 1887, and its failure, the assessment of the Troy Union Railroad Company was continued, as heretofore, at $30,000, and that Company has since its existence paid the tax levied by the city of Troy on such assessment of $30,000 down through the year 1906.

19. In the years 1886 and 1887 the then Assessors of the city of Troy assessed the Troy Union Railroad Company for its railroad, station and other property in the city of Troy $783,984 in each year. The objection of the Troy Union Railroad Company to said assessment and the result of the proceeding brought to review the same, are contained in the record of that proceeding introduced and received in evidence herein, and reference is made thereto for the detail thereof as though the same were incorporated in this finding.

20. Following the execution of the contract of July 1, 1858, and under its provisions, the Troy Union Railroad Company, to the time the assessment herein complained of was made, continued to maintain the railroad and station previously constructed and main-
406 tained by that Company, employing men and purchasing the materials for that purpose, and contracting for the work needed to keep the railroad and station in suitable and proper condition for use. During that period it has had the supervision and control of the station, it has erected and maintained gates at street crossings and employed gatemen and flagmen at such crossings. It has erected and maintained signal towers along such railroad and employed men to occupy and operate the same. It has kept the station insured in its own name as owner, and during a portion of the time following the execution of such contract and before the final payment on its mortgage to the City of Troy, assigned the policies of insurance thereon to the city of Troy as collateral security for its mortgage. It has conveyed since July 1, 1858, some portion of the land acquired before that date. It has leased portions of the station not required for the common use of the four railroad companies using the same, and has leased land not occupied by the

railroad station, with the privilege of erecting buildings thereon. It has rebuilt the station in part or entirely—since in 1859; again in 1862, following its partial destruction by fire; and again in 1901-1902—which rebuilding was then at an expense of $250,000. The last constructed station has been and is kept insured by it in its own name as owner, the policies for which contain a provision that they will be void if the interest of the insured in the property covered thereby was or is not truly stated therein.

21. Said Troy Union Railroad Company pays no dividends. Its receipts and disbursements each year are equal. Its disbursements are provided for by an assessment made upon the three rail-
407 road companies owning its stock. Its passenger house, built in 1901-1902, was paid for by the three railroad companies owning its stock—New York Central & Hudson River Railroad Company paying one-half, the Boston & Maine Railroad Company paying one-fourth, and the Delaware & Hudson Company paying one-fourth. The railroad companies holding stock in the Troy Union Railroad Company in 1852, and their successors, have since that time continuously occupied and used the passenger station and tracks without restriction.

The Troy Union Railroad Company does not operate, and never has operated, any railroad; it has not owned and does not own any locomotive or passenger cars, or freight cars, or baggage cars. It has no train dispatcher.

All the construction and maintenance of the railroad in the city of Troy described in the assessment herein has been at the expense of, and has been paid for by, the railroads owning stock in the Troy Union Railroad Company and their respective successors, as hereinbefore found.

The Troy Union Railroad has carried no passengers and has no transportation business. The men employed to take care of the track and the flagmen at crossings are paid by the railroads using the tracks in proportions to their stock ownership, as hereinbefore found.

22. The relator, the New York Central & Hudson River Railroad Company, is a domestic corporation, operating a railroad in the State of New York, extending from the city of New York to the city of Buffalo, owning and leasing certain branch lines thereof, including the branch known as the Schenectady and Troy Branch, together with other railroads, and is the lessee and in posses-
408 sion of the railroad of the Troy & Greenbush Railroad Company, also a domestic corporation. The railroad of the Troy & Greenbush Railroad Company was constructed prior to 1851, and had its terminus in River street in the city of Troy, N. Y.

Conclusions of Law.

1. The contract dated July 1, 1858, was not in form or legal effect a Deed or instrument conveying the title of the Troy Union Railroad Company to its railroad station and other property in the city of Troy, or any part thereof, to the New York Central & Hudson River, Rensselaer & Saratoga and Troy & Boston Railroad Com-

panies or any one of them, and neither of said railroad companies thereunder or thereby acquired title to any part of such railroad station or other property.

2. Chapter 201 of the Laws of 1909 of the State of New York, entitled, "An act to repeal Chapter 462 of the Laws of 1853, entitled, "An act providing for the taxation of the property of the Union Railroad Company in Troy, passed June 24, 1853," was and is constitutional, legal and valid, and was not and is not an impairment of any obligation of any contract, and was not and is not in contravention of subdivision 1 of section 10 of article 1 of the Constitution of of the United States, which prohibits the passage by the Legislature of any law impairing the obligation of a contract.

3. The petition herein should be dismissed and the writ of certiorari herein quashed, with costs.

JOS. A. LAWSON, *Referee.*

Dated, Albany, N. Y., August 13, 1914.

409 *Notice of Hearing at Special Term.*

Supreme Court.

THE PEOPLE ex Rel. NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY

against

G. FRANK MEALY and Others, as Assessors, etc., and Another.

To Visscher, Whalen & Austin, Esqs., relator's attorneys.

SIR: Take notice, that upon the Petition for a Writ of Certiorari in the above-entitled proceeding, the Writ of Certiorari and the Return thereto, the Order of the Court appointing Joseph A. Lawson, Esq., Referee to take evidence upon the issues and to report the same to the Court, with his findings of fact and conclusions of law, the evidence taken and all proceedings had in said matter, and upon the Referee's report herein, filed in Rensselaer County Clerk's office August 14, 1914, and upon such exceptions as have been filed, the undersigned, as attorneys for the defendants, will move the Court, at a Special Term thereof to be held at the City Hall in the City of Albany, N. Y., December 12, 1914, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for a final Order and Decree dismissing the Petition herein and quashing the Writ of Certiorari herein with costs, and confirming the sec-
410 ond and third conclusions of law of the Referee and reversing the first conclusion of law of the Referee, and for such other and further relief as may be just.

Dated, Troy, N. Y., November 12, 1914.

Yours, etc.,

CHARLES I. WEBSTER.

Corporation Counsel and Defendants' Attorney,

City Hall, Troy, N. Y.

Notice of Hearing at Special Term.

Supreme Court.

THE PEOPLE ex Rel. TROY UNION RAILROAD COMPANY

against

G. FRANK MEALY and Others, as Assessors, etc., and Another.

To Lewis E. Carr, Esq., relator's attorney:

SIR: Take notice, that upon the petition for a Writ of Certiorari in the above-entitled proceeding, the Writ of Certiorari and the Return thereto, the Order of the Court appointing Joseph A. Lawson Esq., Referee to take evidence upon the issues and to report the same to the Court, with his findings of fact and conclusions of law, the evidence taken and all proceedings had in said matter, and upon the Referee's Report herein filed in Rensselaer County Clerk's
411 office, August 14, 1914, and upon such exceptions as have been filed, the undersigned, as attorney for the defendants, will move the Court, at a Special Term thereof to be held at the City Hall in the City of Albany, N. Y., December 12, 1914, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for a final Order and Decree dismissing the petition herein and quashing the Writ of Certiorari herein, with costs, and confirming the second and third Conclusions of Law of the Referee and reversing the first Conclusion of Law of the Referee, and for such other and further relief as may be just.

Dated, Troy, N. Y., November 12, 1914.

Yours, etc.,

CHARLES I. WEBSTER,
Corporation Counsel and Defendants' Attorney,
City Hall, Troy, N. Y.

412 *Special Term Findings.*

Supreme Court.

THE PEOPLE ex Rel. NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY

against

G. FRANK MEALY and Others, Assessors of the City of Troy, and Another.

The above entitled matter having come on for argument at a Special Term of the Supreme Court on the second day of January, 1915, at the City of Albany, Albany County, N. Y., the undersigned, a Justice of the Supreme Court, presiding, the relator being represented by Visscher, Whalen & Austin, Esqs., attorneys, and Lewis

E. Carr, counsel; and the defendants by Charles I. Webster, Esq. corporation counsel of the City of Troy, and G. B. Wellington counsel; and all the papers and proceedings herein having been brought to the attention of the Court and having been heretofore duly filed, the Court makes the following decision:

Facts.

1. Chapter 255 of the Laws of 1851 was passed by the Legislature of the State of New York June 20, 1851, and duly became a law that year. Said statute is as follows, to wit:

"An Act to Authorize the City of Troy and Certain Railroad
413 Corporations to Subscribe for and Become the Owners of Stock for the Construction of a Railroad Through the Whole or Some Portion of the City of Troy. Passed June 20 1851, Three-fifths Being Present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Sec. 1. The corporation of the City of Troy, and the several railroad corporations whose railroads now or hereafter shall come to the City of Troy, or which have or shall have their business terminus in, or run their trains to and from said City, may subscribe for and become the owners of stock in a railroad corporation to be organized under the act entitled, "An Act to authorize the formation of railroad corporations and to regulate the same," passed April second one thousand eight hundred and fifty, for the construction of a railroad, with one or more tracks, through the whole or a portion of said City; but there shall not be more than one railroad through that part of the City of Troy lying between Adams and Federal streets. The corporation of the City of Troy shall not subscribe for or take more than one-fourth part of the capital stock of the corporation to be organized.

Sec. 2. The corporation of the City of Troy is hereby authorized to borrow upon the bonds of said City, redeemable in not more than twenty years, at an annual interest of six per cent. a sum not exceeding the cost of the construction of such railroad; but no bonds shall be issued therefor by the corporation of said City until said corporation shall, by the several railroad corporations which are authorized to subscribe for stock by the first section of this
414 Act, and also by a mortgage on the railroad so to be constructed, its capital stock and franchises, be fully indemnified and made harmless against the payment of any bonds and the interest thereon which said City of Troy may issue under the authority of this act.

Sec. 3. All railroads which now or hereafter shall have their trains running from the City of Troy may, on equal terms and with equal privileges, use the railroad track or tracks hereby authorized to be constructed, and shall be entitled to at least two directors in said railroad corporation, who shall be residents of the City of Troy.

Sec. 4. Jonas C. Heartt, Elias Plum, Joseph M. Warren, Hiram Slocum, Le Grand B. Cannon, Isaac McConihe, Russell Sage, David Buel, junior, and Thomas Symonds, shall be commissioners to obtain subscriptions to the capital stock in the railroad corporation hereby authorized, and shall, by a majority of their number, be empowered to locate such railroad, subject to the approval of a majority of all the members elected to the common council of the City of Troy; and in case of the death or refusal to act of any of said commissioners, the common council of said City shall fill such vacancy."

2. July 21, 1851, the Troy Union Railroad Company was incorporated under the General Railroad Law of 1850 by the due filing of a certificate of incorporation. The capital stock was fixed at $30,000, consisting of three hundred shares of the par value of $100 each. Its corporate existence was to be one hundred years. Its purpose was to construct, operate and maintain a railroad for the conveyance of persons and property, pursuant to the General Railroad Law
415 of 1850, in or through a portion of the City of Troy, with one or more tracks, etc. For the provisions of said certificate of incorporation reference is made to said certificate introduced and received in evidence and a part of the record.

3. Chapter 462 of the Laws of 1853 was passed by the Legislature of the State of New York in the year 1853, and duly became a law in June, 1853. It reads as follows:

"An Act Providing for the Taxation of the Property of the Union Railroad Company in Troy. Passed June 24, 1853, Three-fifths Being Present.

The People of the State of New York represented in Senate and Assembly, do enact as follows:

§1. For the purposes of taxation in the City of Troy, and in the County of Rensselaer, the property of the Troy Union Railroad Company shall be estimated and assessed (as the common council of said City of Troy, by its contract with said Company dated December third, eighteen hundred and fifty-two, agreed that the same should be) at the amount of the capital stock of said Company, and no more; and (as agreed in the said contract) the bridge of the Rensselaer and Saratoga Railroad Company over the Hudson river at Troy shall, for the purpose of taxation, not be estimated or assessed at any increased valuation by reason of the addition thereto, agreed for in said contract.

§ 2. This act shall take effect immediately."

4. The assessment made by said G. Frank Mealy, George Spence, Jr., George B. Walker and Silas Downs, Jr., General Assessors of the City of Troy, a municipal corporation, being a city of the second class, for the purposes of taxation—which said assessment was
416 made in the year 1911, and of which said assessment the relator complains in this proceeding—appears upon said assessors' books as follows:

"Troy Union Railroad Co., Boston and Maine Railroad Co., Dela-

ware and Hudson Railroad Co., New York Central and Hudson River — Road Co.

The lands of roadbed and adjacent thereto in the several wards of the City, with rails, superstructures, depot buildings and appurtenances, being all the railroad property in the City of Troy located between Madison St. on the south, Hoosick St. on the north, and the approach of the Delaware and Hudson Company's bridge on the west, excepting that portion assessed as franchises lying in public streets. (Valuation, $1,000,000.) (Real property.) Special franchise, 1911. $215,400."

5. All the real estate mentioned and described in said assessment was acquired in the name of the Troy Union Railroad Company prior to July 1, 1853, excepting two small parcels acquired in 1864, which were then valued, together, at $666; a small parcel between Congress and Ferry streets acquired in 1864, then valued at $333; a parcel acquired in 1866, then valued at $200, and a parcel acquired in 1887, then valued at $1,800.

6. In December, 1852, there was duly executed and delivered an agreement between the corporation of the City of Troy, said Troy Union Railroad Company, said Rensselaer & Saratoga Railroad Company, said Schenectady & Troy Railroad Company, said Hudson River Railroad Company, and said Troy & Boston Railroad Company, which was offered and received in evidence and is set forth in full in the record. For the provisions thereof reference is
417 made to the record in this case without setting forth said agreement in full in this finding.

Reference is also made to the survey referred to in said agreement, which said survey was offered and received in evidence and is a part of the record herein.

7. There was executed and delivered an instrument in writing dated July 1, 1858, duly executed by the corporation of the City of Troy, the Troy Union Railroad Company, the Rensselaer & Saratoga Railroad Company, New York Central Railroad Company and Hudson River Railroad Company and Troy & Boston Railroad Company, recorded December 2, 1858, in Rensselaer County Clerk's office in Book of Deeds 108 at page 279 et seq., which was offered and received in evidence and is a part of the record herein. Reference may be made to said record for the terms of said instrument as though the same were incorporated in full in this finding.

Reference may also be made to the survey referred to in said instrument, which said survey was offered and received in evidence and is a part of the record herein.

8. Chapter 201 of the Laws of 1909 was passed by the Legislature of the State of New York in that year, was duly accepted by the City of Troy and signed by the Governor of the State of New York, and became a law in the year 1909. It reads as follows:

"An Act to Repeal Chapter Four Hundred and Sixty-two of the Laws of Eighteen Hundred and Fifty-three, Entitled 'An Act Providing for the Taxation of the Property of the Union Railroad Company in Troy,' Passed June Twenty-fourth, Eighteen Hundred and Fifty-three.

Became a law April 17, 1909, with the approval of the
418 Governor. Passed, three-fifths being present. Accepted by the City.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter four hundred and sixty-two of the laws of eighteen hundred and fifty-three, entitled "An act providing for the taxation of the property of the Union Railroad Company in Troy," passed June twenty-fourth, eighteen hundred and fifty-three, is hereby repealed.

§ 2. This act is not retroactive and shall not be held to apply to or to affect any litigation pending at the time it becomes a law.

§ 3. This act shall take effect immediately."

9. July 21, 1911—which was one of the days on which complaints might be made to the Board of Assessors of the city of Troy with reference to assessments made by said Assessors—the relator herein filed with said Board of Assessors a written objection to the assessment hereinbefore in these findings set forth and complained of by the relator in this proceeding, which said protest was in due form, and for the contents thereof reference may be had to the record herein without setting forth said protest in full in this finding.

10. In and prior to the year 1852 the Troy & Greenbush Railroad had a terminus on River street at Adams street, but passengers were discharged somewhere between the foot of State street and the Troy House.

The steam cars of the Rensselaer & Saratoga Railroad Company stopped on Green Island, on the opposite side of the river from Troy, and passenger cars were brought by horses across the bridge down River street and stopped at the Troy House.

419 The Schenectady & Troy Railroad had a terminus on the Green Island side of the river opposite Troy, and its passenger cars were drawn over by horses and came down River street to the then steamboat landing near the foot of State street.

The terminus of the Troy & Boston Railroad was on River Street in front of the Mansion House. The passenger cars were drawn down by horses from Hoosick street.

There was at that time no Union Station in the city of Troy.

Prior to December 3, 1852, the road of the Troy & Greenbush Railroad Company was leased to, and thereafter operated by, the Hudson River Railroad Company.

Prior to July 1, 1853, the road of the Schenectady & Troy Rail-

road Company was leased to, and thereafter operated by, the New York Central Railroad Company.

11. Following the organization of the Troy Union Railroad Company and the execution of the contract dated December 3, 1852 the Troy Union Railroad Company acquired title to parcels of real estate in the city of Troy by purchase and also by condemnation proceedings. The dates of the acquiring of title to the various parcels are contained in the search offered and received in evidence herein, and for said dates reference is made to said search as though the same were incorporated in detail in this finding.

The Troy Union Railroad Company constructed a Union Station and united the termini of the four railroad companies hereinbefore referred to in this decision.

The city of Troy issued its bonds to the aggregate amount
420 of $707,000, the proceeds from the sale of which were used by the Troy Union Railroad Company for the purchase of land in question and the construction of the Union Railroad and station.

The Troy Union Railroad Company executed and delivered to The City of Troy a mortgage dated December 1, 1852, on its road property and franchises to secure the payment of the principal and interest of said bonds, and the four railroad companies parties to the contract of December 3, 1852, executed and delivered to the city of Troy separate agreements by which they indemnified the city of Troy against any default of the Troy Union Railroad Company upon its mortgage to said City to the extent of one-fourth of the amount secured thereby, not, however, exceeding $125,000.

12. The proposed Union Railroad and station constructed by the Troy Union Railroad Company, as heretofore found, were completed on or before January 1, 1855, and were thereafter occupied by and used in common by the said Troy Union Railroad Company and by the four railroad companies whose several and respective railroads previously terminated as hereinbefore set forth, and by their successors. The former termini were thereupon given up.

13. By the contract of July 1, 1858, hereinbefore found, the contract dated December 3, 1852, was annulled.

14. No other contract or instrument relative to the Troy Union Railroad Company's railroad station or other property, or to the title thereto, or to any part thereof, was at any time after the execution of the contract dated July 1, 1858, executed. The parties to
said contract dated July 1, 1858, did not thereafter ac-
421 or assume to act, under any other or different contract, and
said contract dated July 1, 1858, is the instrument under and in accordance with which the parties thereto have at all times acted relative to and in connection with said railroad station and other property and the maintenance and use thereof.

15. In 1871 the Rensselaer & Saratoga Railroad Company leased all its property and franchises to The President, Managers & Company of the Delaware & Hudson Canal Company, the name of which Company was by Chapter 469 of the Laws of 1899 changed to the Delaware & Hudson Company.

Subsequent to the execution of the contract dated July 1, 1858, and before the assessment complained of herein, the New York Central Railroad Company and the Hudson River Railroad Company consolidated and became the New York Central & Hudson River Railroad Company; the Troy & Boston Railroad Company was consolidated with the Fitchburgh Railroad Company and the railroad of such consolidated railroad company was leased to the Boston & Maine Railroad.

16. The mortgage given by the Troy Union Railroad Company to the city of Troy to secure the payment of the principal of and interest on the bonds issued by the City of Troy to provide money for the construction of the railroad and station of that Company, was fully paid prior to July 26, 1901, and on that day was discharged of record in the Rensselaer County Clerk's office.

17. The Troy Union Railroad Company has since its organization in 1852 retained and continued its corporate existence, and was in the year 1911 a duly organized, existing and acting corporation, having legal right to acquire, hold and own real estate used
422 and to be used for railroad purposes. Its capital stock has been at all times since its organization, and at the time of the assessment complained of herein was, $30,000, and no more.

18. Each year since the organization of the Troy Union Railroad Company down through the year 1906, said company has been assessed on the assessment-rolls of the city of Troy, for and upon its property therein, $30,000. No change was made in such assessment following the execution of the contract of July 1, 1858, nor was any attempt made by the city of Troy to make any change therein until the years 1886 and 1887, which attempt and its result are hereinafter found. Following such attempt to change such assessment in the years 1886 and 1887, and its failure, the assessment of the Troy Union Railroad Company was continued, as heretofore, at $30,000, and that company has since its existence paid the tax levied by the city of Troy on such assessment of $30,000 down through the year 1906.

19. In the years 1886 and 1887 the then Assessors of the city of Troy assessed the Troy Union Railroad Company for its railroad, station and other property in the city of Troy $783,984 in each year. The objection of the Troy Union Railroad Company to said assessment and the result of the proceeding brought to review the same, are contained in the record of that proceeding introduced and received in evidence herein, and reference is made thereto for the details thereof as though the same were incorporated in this finding.

20. Following the execution of the contract of July 1, 1858, and under its provisions, the Troy Union Railroad Company, to the time the assessment herein complained of was made, con-
423 tinued to maintain the railroad and station previously constructed and maintained by that Company, employing the men and purchasing the materials for the purpose, and contracting for the work needed to keep the railroad and station in suitable and proper condition for use. During that period it has had the

supervision and control of the station, it has erected and maintained gates at street crossings and employed gatemen and flagmen at such crossings. It has erected and maintained signal towers along such railroad and employed men to occupy and operate the same. It has kept the station insured in its own name as owner, and during a portion of the time following the execution of such contract and before the final payment on its mortgage to the city of Troy, assigned the policies of insurance thereon to the City of Troy as collateral security for its mortgage. It has conveyed since July 1, 1858, some portion of the land acquired before that date. It has leased portions of the station not required for the common use of the four railroad companies using the same, and has leased land not occupied by the railroad station, with the privilege of erecting buildings thereon. It has rebuilt the station in part or entirely—once in 1859; again in 1862, following its partial destruction by fire; and again in 1901-1902—which rebuilding was then at an expense of $250,000. The last constructed station has been and is kept insured by it in its own name as owner, the policies for which contain a provision that they will be void if the interest of the insured in the property covered thereby was or is not truly stated therein.

21. Said Troy Union Railroad Company pays no dividends. Its receipts and disbursements each year are equal. Its dis-
424 bursements are provided for by an assessment made upon the three railroad companies owning its stock. Its passenger house, built in 1901-1902, was paid for by the three railroad companies owning its stock—New York Central & Hudson River Railroad Company paying one-half, the Boston & Maine Railroad Company paying one-fourth, and the Delaware & Hudson Company paying one-fourth. The railroad companies holding stock in the Troy Union Railroad Company in 1852, and their successors, have since that time continuously occupied and used the passenger station and tracks without restriction.

The Troy Union Railroad Company does not operate, and never has operated, any railroad; it has not owned and does not own any locomotive or passenger cars, or freight cars, or baggage cars. It has no train dispatcher.

All the construction and maintenance of the railroad in the city of Troy described in the assessment herein has been at the expense of, and has been paid for by, the railroads owning stock in the Troy Union Railroad Company and their respective successors as hereinbefore found.

The Troy Union Railroad Company has carried no passengers and has no transportation business. The men employed to take care of the track and the flagmen at crossings are paid by the railroads using the tracks in proportion to their stock ownership as hereinbefore found.

22. The relator, the New York Central & Hudson River Railroad Company, is a domestic corporation, operating a railroad in the State of New York, extending from the city of New York to the city of Buffalo, owning and leasing certain branch lines thereof, in-

425 cluding the branch known as the Schenectady and Troy branch, together with other railroads, and is the lessee and in possession of the railroad of the Troy & Greenbush Railroad Company, also a domestic corporation. The railroad of the Troy & Greenbush Railroad Company was constructed prior to 1851, and had its terminus in River street in the city of Troy, N. Y.

Conclusions of Law.

1. The contract dated July 1, 1858, was not in form or legal effect a deed or instrument conveying the title of the Troy Union Railroad Company to its railroad station and other property in the city of Troy, or any part thereof, to the New York Central & Hudson River, Rensselaer & Saratoga and Troy & Boston Railroad Companies, or any one of them, and neither of said railroad companies thereunder or thereby acquired a fee simple absolute title to any part of such railroad station or other property, but said constituent railroad companies acquired thereby a taxable freehold estate in said real property as tenants in common to the extent of an undivided nine-tenths thereof.

2. Chapter 201 of the Laws of 1909 of the State of New York, entitled, "An act to repeal Chapter 462 of the Laws of 1853, entitled, 'An act providing for the taxation of the property of the Union Railroad Company in Troy, passed June 24, 1853,'" was and is constitutional, legal and valid, and was not and is not an impairment of any obligation of any contract, and was not and is not in contravention of subdivision 1 of section 10 of article I. of the Constitution of the United States, which prohibits the passage by
426 the Legislature of any law impairing the obligation of a contract.

3. The petition herein should be dismissed and the writ of certiorari herein quashed, with costs.

ALDEN CHESTER,
Justice Supreme Court.

Dated, Albany, N. Y., January 27, 1915.

Request to Find N. Y. Central Co. and Indorsements Thereon.

Supreme Court, Rensselaer County.

THE PEOPLE ex Rel. THE NEW — CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Relator,

against

G. FRANK MEALY and Others, as Assessors of the City of Troy, and Hiram W. Gordinier, as Comptroller of the City of Troy, New York, Defendants.

Requests to Find Submitted by the New York Central and Hudson River Railroad Company.

1. The Relator is a domestic corporation operating a railroad in the State of New York, extending from the city of New York to the city of Buffalo, owning and leasing certain branch lines
427 thereof, including the branch known as the Schenectady & Troy Branch, together with other railroads, and is the lessee and in possession of the Railroad of the Troy & Greenbush Railroad Company, also a domestic corporation. That the railroad of the Troy & Greenbush Railroad Company was constructed prior to 1851 and had its terminus in River street, in the city of Troy, N. Y.

Found. A. C.

2. In the year 1911 G. Frank Mealy, George Spence, Jr., George B. Walker and Silas Downs, Jr., were the general assessors of the city of Troy, N. Y., a municipal corporation, and constituted the Board of Assessors of that city for the year 1911, and H. W. Gordinier was, during that year, the Comptroller of that city.

Found. A. C.

3. The defendants, constituting the Board of Assessors of the City of Troy, in the year 1911, in making assessments of the property in that City for that year for the purposes of taxation, inserted in the assessment roll the following assessment against the Relator:

Found. A. C.

Third Ward:—Troy Union Railroad Company, Boston & Maine Railroad Company, Delaware & Hudson Co., New York Central & Hudson River Railroad Co.

The lands of road-bed and adjacent thereto in the several wards of the City, with rails, superstructures, depot building and appurtenances, being all the railroad property in the City of Troy, located between Madison St. on the south, Hoosick St. on the north
428 and the approach of the Delaware & Hudson Co. on the west, excepting that portion assessed as franchises lying in public streets, $1,000,000."

4. July 21st, 1911, which was one of the days whereon complaints might be made to such Board of Assessors with reference to assessments made by them, the Relator filed with said Board of Assessors a written objection to said assessment, and asked that it be stricken from the assessment roll, which objection was that it at no time had been and was not the owner of the property so assessed to it, nor in the possession or occupation of the same, or any part thereof, as owner, but the same was owned by the Troy Union Railroad Company, and the only interest the Relator had therein was as a stockholder of the said Troy Union Railroad Company, of which facts proof was offered to said Board of Assessors if it was required, but proof thereof was not required. The defendants denied such application of the Relator and refused to strike said assessment from the assessment roll, and thereafter completed said assessment roll, retaining such assessment against the Relator thereon. The assessment so made and retained on said roll is the one mentioned in the petition for a Writ of Certiorari herein.

Found. A. C.

5. In and prior to the year 1851, four railroads had their respective termini in River street in the City of Troy. That street was then and has since continued to be one of the principal business streets of that city. The railroads so terminating in River street were those of the Rensselaer & Saratoga, Troy and Boston, Schenectady and Troy, and Troy and Greenbush Railroad Com-
429 panies. They were not connected and cars were hauled on them in that street by horses. There was at that time no Union station in the City of Troy. Prior to December 3d, 1852, the road of the Troy and Greenbush Railroad Company was leased and thereafter operated by the Hudson River Railroad Company. Prior to July 1st, 1858, the road of the Schenectady and Troy Railroad Company was leased and thereafter operated by the New York Central Railroad Company.

Found. A. C.

6. In the year 1851, as the result of negotiations between the Common Council of the City of Troy and representatives of the four railroad companies having their tracks and terminals in River street, the City of Troy and such railroad companies agreed upon a plan for the construction and operation of a single union railroad through a portion of the City of Troy away from River street for the common use of said companies, by which the four railroads would be connected for the construction and maintenance of a union station and for the removal of their tracks from River street and the abandonment of that street as a terminus for such roads. The substantial parts of the plan so agreed upon and of the things done to make it effective and secure the results contemplated are contained in the requests following numbered 7, 8, 9 and 10.

Found. A. C.

7. By Chapter 255 of the Laws of 1851, which became a law Ju
20, 1851, the Legislature of the State of New York authoriz
430 the organization of a new railroad company to construct
railroad through some portion of the City of Troy, authoriz
the City of Troy to issue its bonds to an amount equal to the cost
the construction of such road, the proceeds of which were to be us
therefor, authorized the City of Troy and the four railroad compani
having their business termini in that city to subscribe for, and b
come the owners of, stock in a railroad corporation to be organiz
under the then general railroad law for the construction of a ra
road through the whole or a portion of the City of Troy, and pr
vided for the appointment of commissioners to obtain subscriptio
to the stock of such new company, and to locate the line of such n
railroad.

Refused except as found in decision. A. C.

8. July 21st, 1851, The Troy Union Railroad Company was orga
ized under the general railroad law of the State of New York, Chap
140 of the Laws of 1850, pursuant to the law of 1851, referred to
the preceding finding, by filing its Articles of Association as requir
by said general railroad law, that day. Its capital stock was there
fixed at $30,000 and the railroad to be constructed by it was the o
provided for in the law of 1851.

Found. A. C.

9. December 3d, 1852, a written contract, duly executed by t
parties thereto, was entered into by and between the City of Tr
The Troy Union Railroad Company, the Schenectady and Tr
Hudson River, Rensselaer and Saratoga, and Troy and Boston Ra
road Companies, in and by which it was contracted and agreed
follows:

Found. A. C.

431 (*a*) The Troy Union Railroad Company should constr
and Maintain a railroad in the City of Troy with two or mo
tracks, as the same had been located by the Commissioners named
the law of 1851, and approved by the Common Council of the C
of Troy, of which location a survey was attached to, and formed
part of, such contract, the occupation of streets by such railroad w
assented to by the City of Troy, and the right to occupy a portion
Sixth street for its passenger house was also assented to by the Ci
(*b*) The four railroad companies other than The Troy Uni
Railroad Company, parties to such contract, should take an equ
amount of the stock of the Troy Union Railroad Company so as
fill up its capital of $30,000.
(*c*) The City of Troy should issue its bonds for a sufficie
amount to pay the cost of constructing the proposed railroad a
station, sell them and pay over their proceeds to The Troy Uni
Railroad Company to be used by that Company in constructing

road and station. The Troy Union Railroad Company should secure the payment of such bonds and the interest accruing thereon by executing to the City of Troy a mortgage on its road, buildings, property rights and franchises, and the four other railroad companies should each execute to the City of Troy an agreement to indemnify it against default by The Troy Union Railroad Company on its mortgage, the amount of such indemnity as to each company being $125,000.

(*d*) The Troy Union Railroad Company should raise the money needed by it for maintaining the road and station after their construction was completed, and for the payment of the interest
432 upon, and principal of, the city bonds issued to obtain the money required for constructing such road and station, by tolls to be levied upon and paid by the four companies using the road and station, each having equal use thereof. Such tolls were to be based on the cars moved upon and over such roads respectively and their rate or the method of fixing them was in said contract provided.

(*e*) The City of Troy was to join in an application to the legislature that The Troy Union Railroad Company should, for the purposes of taxation in the City of Troy and County of Rensselaer, be exempt from taxation upon any amount exceeding the then amount of its capital stock (which was $30,000), and if such law should not be passed, the City of Troy agreed to refund to The Troy Union Railroad Company an amount equal to the city taxes imposed on that Company for any valuation exceeding its then capital stock.

(*f*) The stock and property of The Troy Union Railroad Company should belong equally to the four railroad companies, parties to that contract, subject to the mortgage to the City of Troy and payment of the bonds of the city, and said railroad companies should have equal rights and privileges in the track and station of The Troy Union Railroad Company, subject to such reasonable police regulations for the use of the road and station as that company might prescribe.

(*g*) No other railroad track should be located and used except that of The Troy Union Railroad Company, between Hoosick and Adams streets, in the City of Troy, except tracks from those of that Company to the respective freight houses of the other companies and to connect with those on the bridge of the Rensselaer and Saratoga Railroad Company over the Hudson River.

433 10. Following the execution of the contract mentioned in the preceding finding, the Legislature of the State of New York passed the act following, which became a law June 24th, 1853.

Refused except as found in decision. A. C.

"Chapter 462.

An Act Providing for the Taxation of the Union Railroad Company in Troy.

Sec. 1. For the purposes of taxation in the City of Troy, and in the County of Rensselaer, the property of the Troy Union Railroad

Company shall be estimated and assessed (as the Common Council of said City of Troy, by its contract with said company, dated December third, eighteen hundred and fifty-two, agreed that the same should be), at the amount of the capital stock of said company, and no more; and (as agreed in said contract), the bridge of the Rensselaer and Saratoga Railroad Company over the Hudson River at Troy, shall, for the purpose of taxation, not be estimated or assessed at any increased valuation by reason of the addition thereto, agreed for in said contract.

Sec. 2. This act shall take effect immediately."

Such statute was the one contemplated and provided for in the contract between the City of Troy, The Troy Union and other railroad companies hereinbefore found and was a material part of the plan agreed upon by and between the City and the railroad companies then having their termini in River street as herein'efore found, in that it was in part the consideration for the agreement of the four railroad companies to give up their respective rights to have and maintain their tracks in River street and to incur the expense of constructing and thereafter maintaining a union road and station away from River street for their common use.

434 11. Following the acts of the Legislature of the State of New York, the organization of The Troy Union Railroad Company and the execution of the contract between the City of Troy and The Troy Union and the four other railroad companies named therein and parties thereto, which matters have been heretofore found, The Troy Union Railroad Company purchased the land required for the construction of the proposed Union railroad and station, taking the title to such land in its name, and constructed such Union railroad and station thereon and in and across the streets of the City of Troy pursuant to the assent of said City contained in said contract of December 3d, 1852; the City of Troy issued its bonds constructing and thereafter maintaining a union raod and station construction, the proceeds of which bonds were received by The Troy Union Railroad Company and were used by it for the purchase of land therefor and the construction of such Union railroad and station; The Troy Union Railroad Company executed and delivered to the City of Troy a mortgage upon its road, property and franchises to secure the payment of the interest on and principal of the bonds of the City of Troy so issued; and the four railroad companies parties to said contract of December 3d, 1852, each executed and delivered to the City of Troy separate agreements in and by which they each indemnified the City of Troy against any default of The Troy Union Railroad Company upon its mortgage to said City to the extent of one-fourth of the amount secured thereby, not, however, exceeding $125,000.

Refused except as found in decision. A. C.

435 12. The proposed Union railroad and station constructed by the Troy Union Railroad Company as hereinbefore found were completed on or before January 1st, 1855, and were thereafter

used in common by the said four railroad companies whose several and respective railroads previously terminated in River street, that street was thereupon given up by them as a terminal for their several and respective railroads and neither of said railroads, at any time thereafter, asserted or claimed any right in, along or upon River street for their several and respective railroads.

Found. A. C.

13. Prior to the year 1857 The Troy Union Railroad Company made default in paying the interest on the bonds issued by the city of Troy as hereinbefore found, and in making such payment on account of the principal thereof as was required in and by said contract of December 3rd, 1852. Such default on its part resulted from the failure of the method of raising the money required for those purposes and for maintaining the union railroad and station provided in said contract to accomplish the result contemplated therein, in that the number of cars operated by the respective companies over such railroad at the rate of tolls fixed in such contract did not produce an amount of money equal to the needs of The Troy Union Railroad Company for the purposes stated above in this finding.

Found. A. C.

14. In consequence, and as the result of such default, the city of Troy in 1857 commenced an action in the Supreme Court of the State of New York to foreclose the mortgage hereinbefore
436 found to have been executed and delivered to said city. In the same action was included the indemnity agreements of the four railroad companies parties to the contract of December 3rd, 1852, hereinbefore found, and such railroad companies were made parties defendant in said action with The Troy Union Railroad Company. For the purpose of settling that action and the matters connected with it growing out of the relations between The Troy Union Railroad Company and the four other railroad companies, parties to said contract of December 3rd, 1852, and the city of Troy, the city of Troy, The Troy Union Railroad Company and the four other railroad companies then owning the stock of The Troy Union Railroad Company entered into another contract in writing with reference to said union railroad and station and the rights and obligations of the parties thereto in connection therewith. Such contract was thereafter known as the Reformed Contract of 1858. It bore date July 1st, 1858, but was in fact executed by the parties thereto in November of that year. The substantial parts of that contract were as follows:

Found. A. C.

(*a*) The Troy Union Railroad Company might continue, maintain and operate its railroad in the city of Troy as then located and constructed according to the map and survey thereof, a copy of which was attached to the contract and was the same as the survey attached to the contract of December 3rd, 1852, and might continue to occupy, as theretofore, the land on each side of Sixth Street for a pas-

senger house (later called station), with the course of that street changed so as to pass along either or both sides of the pas-
437 senger house (station) as might be desired by The Troy Union Railroad Company.

(*b*) The Troy Union Railroad Company should raise by monthly assessments upon the four railroad companies named in said contract whatever money was required to pay its debts and future expenses, such debts consisting of its obligation to the city of Troy, to pay the principal of, and interest on, its bonds issued, as hereinbefore found, to provide the money required for the construction of its railroad and station, and such future expenses being those incurred in maintaining its railroad and station and the rent to be paid to the Rensselaer and Saratoga Railroad Company for the use of its bridge over the Hudson River, of which monthly assessments each of the four railroad companies named therein should pay one-fourth. In case any one of them failed to pay its share of such monthly assessments, The Troy Union Railroad Company, in addition to all other legal remedies, might exclude the company so in default for a period exceeding thirty days from all use of The Troy Union Railroad, its tracks, passenger house (station), and other property until such payment should be made.

(*c*) Each of the four companies, parties to the contract, should have equal rights and privileges in the tracks, passenger house (station) and other property of The Troy Union Railroad Company, except such reasonable rules, regulations and rent charges for offices as The Troy Union Railroad Company might from time to time prescribe therefor.

(*d*) The Troy Union Railroad Company should pay the Rensselaer and Saratoga Railroad Company an annual rent of
438 $11,500, in monthly instalments, for the use of the bridge of that company across the Hudson River by the four railroad companies, parties to said contract, who were therein authorized to use it, such rent to be credited in the books of The Troy Union Railroad Company to the Rensselaer and Saratoga Railroad Company as cash.

(*e*) The New York Central and Hudson River Companies should each own one-fourth part and the Rensselaer and Saratoga and Troy and Boston Companies should each own one-fifth part of the railroad, passenger house (station) and other property rights and franchises of the Troy Union Railroad Company, subject to the lien of the mortgage thereon to the city of Troy, hereinbefore found, which mortgage should continue and remain in full force and effect, and it was expressly covenanted and agreed by the parties to such contract that nothing therein contained should be deemed, taken or construed to affect or in any way impair the validity, force and effect of such mortgage as a security for so much of the principal and interest secured thereby as was assumed and agreed to be paid in the settlement of the suit to foreclose such mortgage by the several agreements of the New York Central, Hudson River, Rensselaer and Saratoga and Troy and Boston Railroad Companies, executed to the city of Troy, of even date with said contract, the said city of Troy being at liberty to

make such separate contracts with each of them as to the portion of the debt and interest due from each of them and to make such arrangements for the payment thereof as it deemed advisable.

(*f*) In case of the foreclosure of said mortgage because of default in the payment of the principal or the interest thereon, the
439 proceeds of any sale had in pursuance thereof should be applied ratably in proportion to the several amounts assumed of the original debt by each of said railroad companies so that each would be credited on the amount of said debt assumed by it in proportion to the amount thereof so assumed by it until their respective amounts were paid if such proceeds were sufficient for that purpose and the balance, if any, of the ratable share of each should be paid to it.

(*g*) The Troy Union Railroad Company should thereafter, upon the request of the city of Troy, execute and deliver to it a further mortgage upon its capital stock, franchises and property for an amount not exceeding the whole amount owing from said several railroad companies to the city of Troy to be held as further security for the performance of the covenants, conditions and agreements on the part of said several railroad companies to and with said city of Troy.

(*h*) If default should at any time be made by any of said railroad companies, parties thereto, in the payment of any installment of principal or interest to the city of Troy as provided therein by reason of the insolvency of such defaulting company, or if upon suit brought against such defaulting company, judgment should be recovered and execution issued thereon should be returned unsatisfied, in whole or in part, thereupon, and in either case, the right of such defaulting company to use the tracks and other property of The Troy Union Railroad Company should cease and thereupon its title and interest in said Union Railroad should vest in the city of Troy, which might, in addition to all other legal remedies, apply to the proper court for an injunction to restrain such defaulting railroad company from using The Troy Union Railroad Company's tracks, passenger
440 house (station) and other property. It was, however, therein provided with reference thereto that if at any time during the continuance of The Troy Union Railroad Company such defaulting company or its successor should assume and pay all liabilities then accrued or which might thereafter accrue against such defaulting company to the city of Troy, with interest thereon, or if any one of the parties thereto which might be reorganized should pay or assume all liabilities then accrued or which might thereafter accrue against said company in favor of the city of Troy as agreed in the settlement of said suit to foreclose said mortgage, such defaulting company, or its successors or reorganized company, should be restored to all the rights, ownership and privileges in said Troy Union Railroad which said defaulting or reorganized company had therein prior to such default.

(*i*) The four companies named, parties to the contract herein found, might each use the railroad of The Troy Union Railroad Company for the passage of cars propelled by animals, steam or any me-

chanical power at not exceeding fifteen miles per hour, and The Troy Union Railroad Company should erect swing bars at street crossings. In case of its default in so doing the City of Troy might erect them and collect the expense thereof from The Troy Union Railroad Company, which was to be the only penalty incurred by that company or by any of the other railroad companies, parties to such contract, for such default.

(*j*) If the law passed by the Legislature of the State of New York June 24th, 1853, relative to the taxation of the property of The Troy Union Railroad Company in Troy, should at any time be re-
441 pealed, the Common Council of the city of Troy should join in an application to the Legislature of the State of New York that the Troy Union Railroad Company be exempt from taxation upon any amount exceeding the then amount of its capital stock, and if such law should not be passed, the Common Council of the city of Troy should refund to The Troy Union Railroad Company an amount equal to the city taxes imposed on the Troy Union Railroad Company for any valuation exceeding its then capital stock.

(*k*) The stock of the Troy Union Railroad Company should belong one-fourth part to each of the four railroad companies named parties to said contract, subject to an equal proportional contribution therefrom if another railroad should come into the city of Troy and accept of the terms and provisions therein provided therefor.

(*l*) The Troy Union Railroad Company should prescribe all necessary police regulations as to the use of the track and passenger house (station) and there should be no other railroad between Hoosick and Adams streets in the city of Troy, except tracks from that of The Troy Union Railroad Company to the freight houses of the respective railroads and to the tracks on the bridge over the Hudson River.

(*m*) Another railroad company that might thereafter run its trains to or from the city of Troy might on equal terms and with equal privileges and ownership use the railroad tracks, passenger house (station) and other property constructed by The Troy Union Railroad Company. Such equal terms was therein construed to mean the payment of its numerical proportion (each com-
442 pany being counted one), of the bridge tolls for the use of the bridge over the Hudson River and its equal proportion of the original debt created for the construction of The Troy Union Railroad and of all assessments for maintaining the same. The amount of such original debt which might be assumed by such new company should be paid to the city of Troy to be applied by it; two one-fourth parts to the respective obligations of the New York Central and Hudson River Railroad Companies held by the city of Troy and the remainder thereof to said companies, respectively; the other two-fourth parts, first to the balance of the two-fourths of the original debt not assumed by the Rensselaer and Saratoga and Troy and Boston Railroad Companies and the remainder upon the obligation of each of those companies held by the city of Troy for a portion of such original debt. Such obligations were, of the New York Central and Hudson River Railroad Companies each $175,000

of the original debt and $30,000 of accrued interest thereon, of the Rensselaer and Saratoga Railroad Company $125,000, and of the Troy and Boston Railroad Company $100,000.

15. By the contract of July 1st, 1858, hereinbefore found, the contract of December 3rd, 1852, was annulled and those parts of that contract not in terms or in effect reproduced in the later contract upon its execution ceased to be of effect.

Found. A. C.

16. Following the execution of the contract of July 1st, 1858, and under its provisions, The Troy Union Railroad Company, to the time the assessment herein complained of was made, continued to maintain the railroad and station previously constructed
443 and maintained by that company, employing the men and purchasing the materials required for that purpose or contracting for the work needed to keep the railroad and station in suitable and proper condition for use. During that period it has had the supervision and control of the station and of the movement of trains in and about it; it has erected and maintained gates at street crossings and employed gatemen and flagmen at such crossings; it has erected and maintained signal towers along such railroad and employed the men to occupy and operate the same; it has kept the station insured in its own name as owner, and during a portion of the time following the execution of such contract and before the final payment of its mortgage to the city of Troy, assigned the policies of insurance thereon to the city of Troy as collateral security for its mortgage; it has conveyed some portion of the land acquired prior to the execution of the contract of July 1st, 1858, subsequent to its execution; it has leased portions of the station not required for the common use of the four railroad companies using said railroad and station, and has leased land not occupied by the railroad and station with the privilege of erecting buildings thereon; it has rebuilt the station in part or entirely, once in 1859, again in 1862, following its partial destruction by fire, and again in 1901 and 1902, which rebuilding then was at an expense of $250,000; such last constructed station has been and is kept insured by it in its own name as owner, the policies for which insurance contain a provision that they will be void if the interest of the insured in the property covered thereby was or is not truly stated therein; and at all times during the period from the execution of the contract of July 1st,
444 1858, to the making of the assessment complained of herein in 1911, fifty-three years, The Troy Union Railroad Company has, to the knowledge, and with the acquiescence, of the city of Troy and the railroad companies named in said contract and their successors, dealt with the railroad, station and other property acquired and constructed by that company as its owner.

Found. A. C.

17. No evidence was introduced or offered showing that the contract of July 1st, 1858, was at any time delivered by The Troy

Union Railroad Company to the four railroad companies named therein and parties thereto or to any one of them with any intent or purpose on its part of thereby transferring to, and vesting in, such companies or any one of them, its title to said railroad, station and other property or any part thereof. Nor was any evidence introduced or offered showing that the Troy Union Railroad Company or anyone of the four railroad companies named in said contract and parties thereto, or their successors, at any time after the execution of such contract asserted or claimed by words or acts that the title to any part of the railroad, station and other property of The Troy Union Railroad Company was transferred to, and vested in, said railroad companies or any of them by said contract of July 1st, 1858. All of the acts and declarations of The Troy Union Railroad Company and each of the other railroad companies named therein and parties thereto, and of their successors, in connection with, and in relation to, said railroad, station and other property, have been at all times since the contract of July 1st, 1858, was executed
445 to the time the assessment herein complained of was made consistent with, and indicative of, the ownership of the whole thereof by The Troy Union Railroad Company and inconsistent with, and not indicative of, any other or different ownership.

Found. A. C.

18. No evidence was introduced or offered showing that any other contract or instrument relative to The Troy Union Railroad Company's railroad, station and other property or to the title thereto or to any part thereof was at any time after the execution of the contract of July 1st, 1858, executed, or that the parties thereto acted or assumed to act under any other or different contract, and it is hereby found as a fact such contract is the instrument under and in accordance with which the parties thereto have at all times acted relative to, and in connection with said railroad station and other property and the maintenance and use thereof.

Found. A. C.

19. In 1871 the railroad of the Rensselaer and Saratoga Railroad Company was leased to The President, Managers and Company of The Delaware and Hudson Canal Company, the name of which company was, by Chapter 469 of the Laws of 1899, changed to The Delaware and Hudson Company. Subsequent to the execution of the contract of 1858 and prior to the assessment complained of herein, The New York Central and Hudson River Railroad Companies were consolidated and became the New York Central & Hudson River Railroad Company; the Troy and Boston Railroad Company was consolidated with the Fitchburg Railroad Company and the
446 railroad of such consolidation railroad company was leased to the Boston and Maine Railroad Company. By such consolidation and leases the railroad companies, other than The Troy Union Railroad Company, against whom the assessment of 1911, complained of herein was made became the owners of the respective in-

terests of the four railroad companies named in and parties to the contract of 1858, in the stock of The Troy Union Railroad Company and were such owners thereof when said assessment was made.

Found. A. C.

20. The mortgage given by The Troy Union Railroad Company to the City of Troy to secure the payment of the principal of, and interest on, the bonds issued by the City of Troy to provide money for the construction of the railroad and station of that company was fully paid prior to July 26th, 1901, and on that day was discharged of record in the Rensselaer County Clerk's office. Thereupon the several agreements of the four railroad companies named in, and parties to, the contract of July 1st, 1858, executed to the City of Troy assuming the respective portions of the original debt to the City of Troy and interest thereon, hereinbefore found, ceased to have force and effect as obligations of said companies respectively.

Found. A. C.

21. The Troy Union Railroad Company has since its organization in 1852, retained and continued its corporate existence, and was in the year 1911, a duly organized, existing and acting corporation having legal right to acquire, hold and own real estate used and to be used for railroad purposes. Its capital stock has
447 been at all times since its organization and at the time of the assessment complained of herein was $30,000 and no more.

Found. A. C.

22. Each year since the organization of The Troy Union Railroad Company, that Company has been assessed on the assessment rolls of the City of Troy for and upon its property therein, $30,000. No change was made in such assessment following the execution of the contract of July 1st, 1858. Nor was any attempt made by the City of Troy to make any change therein until the years 1886 and 1887, which attempt and its results are hereinafter found. Following such attempt to change the assessment in amount in the years 1886 and 1887 and its failure, the assessment of The Troy Union Railroad Company was continued as theretofore at $30,000, and that company has from the beginning of its existence paid the taxes levied by the City of Troy on such assessment of $30,000.

Refused except as found in devision. A. C.

23. In the years 1886 and 1887, the then assessors of the City of Troy assessed The Troy Union Railroad Company for its railroad, station and other property in the City of Troy, $783,984.00 in each year. The Troy Union Railroad Company objected to such assessments on the ground that by the contract of December 3d, 1852, and the Act, Chapter 462 of the Laws of 1853, it was exempted from assessment for the purposes of taxation upon its property in the City of

Troy, which consisted of its railroad station and other pro
448 erty, to any amount in excess of the amount of its capital sto
which was $30,000, and in due form of law instituted in th
Supreme Court of the State of New York proceedings to review suc
assessments, which proceedings resulted in their reduction to $30,0
in each year, the amount stated and limited in said contract of D
cember 3d, 1852, and said act of 1853, which act was therein he
to be valid and controlled the assessment of the property of Th
Troy Union Railroad Company in the City of Troy. Such decisio
of the Supreme Court was in all respects affirmed by the Court
Appeals of the State of New York prior to the year 1907.

Found. A. C.

24. In the years 1907, 1908 and 1909, the then assessors of th
City of Troy assessed The New York Central & Hudson River Ra
road Company $500,000 upon and for its alleged one-half undivid
interest in the railroad tracks, superstructures, depot, buildings a
appurtenances located between Madison street on the south, Hoosi
street on the north, and the approach of The Delaware & Huds
Company's bridge on the west, which property covered included a
embraced the railroad, station and other property of The Tr
Union Railroad Company. In the same years the assessors of th
City of Troy assessed The Delaware and Hudson Company and th
Boston & Maine Railroad each $200,000 upon its alleged one-fif
undivided interest in the property described in the previous part
this finding.

Found. A. C.

25. The three railroad companies named in the preceding findin
The New York Central & Hudson River Railroad Compan
449 The Delaware and Hudson Company and the Boston
Maine Railroad, each, in each of said years 1907, 1908 a
1909, objected to such assessments on the ground that the railro
tracks, depot and other property in the City of Troy therein me
tioned were constructed, maintained and owned by The Troy Uni
Railroad Company, and the interests of the three railroad compani
named in said assessments, therein were as stockholders of The Tr
Union Railroad Company and not otherwise, and by the Act, Chap
462 of the Laws of 1853, The Troy Union Railroad Company w
exempted from assessment for the purposes of taxation upon its pr
erty in the City of Troy, which consisted of, included and embrac
its railroad, station and other property, to any amount in excess
the amount of its capital stock which was $30,000. Said three ra
road companies previously named in this finding in due form of l
instituted proceedings in the Supreme Court of the State of N
York to review said assessments.

Found. A. C.

26. In the year 1901 and in each of the years following to and i
cluding 1909, the State Board of Tax Commissioners of the State

New York assessed The Troy Union Railroad Company under the franchise tax law for special franchises consisting of its occupation of streets in the City of Troy with and for its railroad and station, which assessments differed in amount in different years and were in each year in excess of the $30,000 The Troy Union Railroad Company was assessed by the assessors of the City of Troy. Such assessments were objected to by The Troy Union Railroad Company on
450 the ground that it was exempted from assessment for the purposes of taxation in the City of Troy to and for any amount exceeding $30,000, the amount of its capital stock, and as the assessments so made for special franchises were all in excess of that amount they were erroneous, illegal and void. Such objections were each year overruled by said State Board of Tax Commissioners and the assessments so made were certified to the City Clerk of the City of Troy and were thereupon entered on the assessment rolls of that city. Proceedings were thereupon instituted in the Supreme Court of the State of New York by The Troy Union Railroad Company to review said assessments.

Found. A. C.

27. During the pendency of the proceedings to review the assessments mentioned in the three preceding findings and before the final determination of any one of them a settlement of the then pending litigations relative to the assessment of the property of the Troy Union Railroad Company in the City of Troy, to and including the year 1909, was made between the City of Troy, the Troy Union Railroad Company and The New York Central and Hudson River Railroad Company, The Delaware and Hudson Company and the Boston & Maine Railroad, in and by which the assessments of The Troy Union Railroad Company for special franchises were cancelled, the proceedings instituted by The New York Central & Hudson River Railroad Company, The Delaware & Hudson Company and the Boston & Maine Railroad to review the assessments of 1907, 1908 and 1909, were dismissed, and orders were entered to the effect previously stated in this finding. There was nothing in the
451 settlement so made which in terms or effect barred or precluded The Troy Union Railroad Company or the three other railroad companies or any one of them named in this and previous findings relative to the assessments of 1907, 1908 and 1909, from instituting proceedings subsequent thereto to review assessments of the property of The Troy Union Railroad Company in the City of Troy on the ground that they exceeded $30,000 or were made against other railroad companies than The Troy Union Railroad Company or any other legal ground.

Found. A. C.

28. April 17th, 1909, the Legislature of the State of New York passed an act that became Chapter 201 of the Laws of 1909, and reads as follows:

Refused except as found in decision. A. C.

"An Act to Repeal Chapter 462 of the Laws of 1853, Entitled 'An Act Providing for the Taxation of the Property of the Union Railroad Company in Troy,' Passed June 24th, 1853.

Section 1. Chapter 462 of the Laws of 1853, entitled 'An Act providing for the taxation of the property of the Union Railroad Company in Troy,' passed June 24, 1853, is hereby repealed.

Section 2. This act is not retroactive and shall not be held to apply to or affect any litigation pending at the time it became a law.

Section 3. This act shall take effect immediately."

The act therein named as being repealed is the one passed by the Legislature of the State of New York June 24, 1853, which approved, ratified and confirmed the agreement of the City of Troy contained in the contract of December 3d, 1852, that the property of
452 The Troy Union Railroad Company in the City of Troy should, for the purposes of taxation therein and in the County of Rensselaer, be assessed at the then amount of its capital stock which was $30,000 and no more, which contract and act have been heretofore found.

29. In the year 1910 the assessors of the City of Troy assessed The Troy Union Railroad Company, the New York Central & Hudson River Railroad Company, The Delaware and Hudson Company and the Boston & Maine Railroad $1,000,000, in form similar to the assessment of the same companies for 1911, which is the subject of review herein. Proceedings in due form of law to review such assessment have been instituted by the companies named therein which are now pending awaiting the determination herein. The taxes levied by the City of Troy on such assessments for the years 1910 and 1911 have been paid by the railroad companies named therein under protest.

Found. A. C.

30. The railroad, station and other property, the title to which was vested in The Troy Union Railroad Company prior to and at the time the contract of July 1st 1858, was entered into and executed, with such additions thereto and such renewals and improvements thereof as have been made since the execution of such contract, which additions, improvements and renewals have been made by The Troy Union Railroad Company, constitute the property solely of The Troy Union Railroad Company and the only interests of the other railroad companies named in the assessment herein the
453 subject of review, therein, are as stockholders of The Troy Union Railroad Company.

Refused. A. C.

31. All of the things agreed to be done by and on the behalf of the Troy Union Railroad Company and by the railroad companies that became stockholders therein to carry out and effect the improvement desired by the City of Troy in constructing and thereafter using

a single union railroad and station elsewhere than in and on River street for the joint and common use of the railroad companies whose railroads to that time terminated in River street, were done prior to the execution of the contract of July 1st, 1858, and the things contained in the contract of December 3d, 1852, and those contained in the contract of July 1st, 1858, which provided for, and related to, the continued maintenance of such union railroad and station have been done. Such union railroad and station have been used continuously since January 1st, 1855. The limitation of the assessment of the property of The Troy Union Railroad Company to $30,000 was a substantial and material part of the consideration for the agreements of the railroad companies previously having their termini in River street to enter upon and undertake the improvement resulting in the construction and use of a union railroad and station and for acquisition of property therefor by The Troy Union Railroad Company and the construction and subsequent maintenance of a union railroad and station. The benefits and advantages anticipated by the City of Troy from such improvement have been received and enjoyed by the City of Troy. There has been no offer by the City of Troy
454 to restore the railroad companies that engaged in and effected such improvement to their former state, nor is the City of Troy now able to make such restoration.

Refused except as found in decision. A. C.

Conclusions of Law.

1. The agreement entered into in 1851 between the City of Troy and the four railroad companies then having their termini in River street in that city, which consisted of the Act of the Legislature of the State of New York of 1851, authorizing subscription to stock in a railroad company to be organized to construct a railroad in the City of Troy and the issue of bonds by the City of Troy to provide the money to build such railroad, the organization of The Troy Union Railroad Company pursuant to such act, the contract of December 3d, 1852, between the City of Troy, The Troy Union Railroad Company and the other railroad companies then having the termini of their respective railroads in River street, and the act of the Legislature of the State of New York, Chapter 462 of the Laws of 1853, which assented to, ratified and approved the exemption of the property of The Troy Union Railroad Company in the City of Troy from assessment on any amount in excess of its then capital stock, which was $30,000 as the City of Troy in such contract of December 3d, 1852, agreed it should be exempted, constituted a valid and binding contract.

Found. A. C.

2. By the acquisition of the land required therefor and the construction of a union railroad and station upon the line and
455 route located by the commissioners designated in the Act of 1851 for that purpose and approved by the Common Council,

The Troy Union Railroad Company became vested with the title t
the land so acquired and to such union railroad and station. Such
acquisition and construction constituted and were performance b
the Troy Union Railroad Company of the contract of December 3
1852.

Refused. A. C.

3. The exemption of the property of The Troy Union Railroa
Company in the city of Troy from assessment therein for the pur
pose of taxation for any amount in excess of $30,000 was one of th
considerations for the performance by The Troy Union Railroa
Company of its contract with the city of Troy expressed in the in
strument of December 3rd, 1852, and for the performance by the fou
railroad companies named in, and parties to, that contract, whos
railroads then terminated in River street, of their respective oblig
tions therein contained. Such exemption of the property of Th
Troy Union Railroad Company from assessment to the extent state
in said contract of December 3rd, 1852, and said act of the Legisl
ture of the State of New York of 1853, was not a gratuity but upo
performance by the Troy Union Railroad Company and the fou
other railroad companies named therein and parties thereto, of th
contract of December 3rd, 1852, became and was and thereafter co
tained to be a contract right based upon an adequate considerati
for its support.

Refused. A. C.

4. The Legislature of the State of New York, by Chapte
456 462 of the Laws of 1853, assented to, approved and ratifi
such exemption and thereby became a party to said contra
of December 3rd, 1852, in respect to, and to the extent of, such e
emption. Upon performance of such contract by the parties there
the Legislature of the State of New York had no legal right to ther
after withdraw such assent, approval and ratification or repeal th
act in and by which such assent, approval and ratification w
granted.

Refused. A. C.

5. The construction and use by The Troy Union Railroad Co
pany and the other railroad companies having their terminals,
the city of Troy, of a union railroad and station in that city elsewhe
than in and upon River street, and the discontinuance of their r
spective railroad tracks in that street and its abandonment as a te
minal for such railroads, were of material and substantial benefit an
advantage to the city of Troy and constituted an adequate consider
tion for the agreement of that city that the property of The Tr
Union Railroad Company therein, which property was acquired an
constructed for the purpose of effecting such change in the locati
of said railroad, should be exempt from assessment for the purpo

of taxation for any amount in excess of $30,000, the amount of its capital stock.

Refused. A. C.

6. Prior to, and at the time of, the execution of the contract of 1858, the right of The Troy Union Railroad Company to have its railroad, station and other property in the city of Troy exempted from assessment for the purpose of taxation to or for any
457 amount in excess of $30,000 had become and was fixed by contract and performance thereof and could not be legally taken away either by the city of Troy or the Legislature of the State of New York or by both combined.

Refused. A. C.

7. The contract dated July 1st, 1858, was not in form or legal effect a deed or instrument conveying the title of the Troy Union Railroad Company, to its railroad, station and other property in the city of Troy or any part thereof, to the New York Central, Hudson River, Rensselaer and Saratoga and Troy and Boston Railroad Companies, or to any one of said companies, and neither of said railroad companies thereunder or thereby acquired title to any part of such railroad, station and other property.

Refused, except as found in decision. A. C.

8. The title of the Troy Union Railroad Company to its railroad, station and other property in the city of Troy remained, after the execution of the contract of July 1st, 1858, vested in The Troy Union Railroad Company to the same extent it was so vested in that company prior to, and at the time, such contract was executed. The title thereto has at all times since remained, and at the time the assessment of 1911, here the subject of review, was made, was vested in that company.

Found. A. C.

9. At the time the assessment of 1911, here the subject of review, was made, neither the New York Central and Hudson River Railroad Company, The Delaware and Hudson Company or the Boston and Maine Railroad owned any part of the railroad, station
458 and other property of The Troy Union Railroad Company, which was the property described in, and covered by, such assessment, and each of the assessments against such companies therefor were erroneous, illegal and void.

Refused. A. C.

10. The provision in the contract of July 1st, 1858, as to the ownership by the parties therein named of the property of The Troy Union Railroad Company, was not and was not intended to be a declaration of present ownership thereof but was and was

intended to be a declaration of the ownership of the respective parties named therein in the future, in the event of the sale of such property under the mortgage thereon or the discontinuance of The Troy Union Railroad Company as an existing corporation, neither of which contingencies has at any time occurred, and such declaration of ownership thereof has therefore at no time taken effect.

Found except as to future ownership. A. C.

11. The right of the Troy Union Railroad Company to have its property in the city of Troy exempted from assessment for the purposes of taxation therein except to the amount of $30,000 existing when the contract dated July 1st, 1858, was executed, was not waived, changed or modified by such contract or any provision therein and remained in full force and effect after the execution of such contract as before its execution, a contract right resting upon adequate consideration.

Refused. A. C.

459 12. The agreement of the city of Troy contained in said contract of July 1st, 1858, that if the Law of 1853 relative to the taxation of the property of The Troy Union Railroad Company in Troy, should be repealed the city of Troy would join in an application to the Legislature for the passage of a law restoring such exemption, was not ultra vires, the city of Troy had then received and was enjoying the benefits resulting from the performance of the contract of which such exemption was a material part, and such agreement on its part had adequate consideration for its support.

Refused. A. C.

13. The annulment of the contract of December 3rd, 1852, by the contract of July 1st, 1858, did not annul or render inoperative any of the provisions of the contract of December 3rd, 1852; which were in terms or in effect embraced in the contract of July 1st, 1858. Nor did it take away, impair or affect the contract rights of the parties thereto then existing which had become and were at that time fixed and established by the performance of the things required to be performed by such contract of December 3rd, 1852.

Refused. A. C.

14. The contract of December 3rd, 1852, and the contract of July 1st, 1858, have been and were in all respects performed by The Troy Union Railroad Company and the other railroad companies named therein and parties to such contracts to, and at the time, the assessment of 1911, here the subject of review, was made and no right then or at any time after the contract of July
460 1st, 1858, was executed existed, either on the part of the city of Troy or the Legislature of the State of New York

to take away or disregard the exemption of the property of the Troy Union Railroad Company in the City of Troy from assessment for the purposes of taxation provided for and agreed to in said contracts or either of them on the ground or for the reason, such contracts had not been performed.

Refused. A. C.

15. Chapter 201 of the Laws of 1909 of the State of New York, entitled, "An act to repeal Chapter 462 of the Law of 1853, entitled "An act providing for the taxation of the property of the Union Railroad Company in Troy, passed June 24th, 1853," was and is unconstitutional, illegal and void, in that it was and is an impairment of the obligation of a contract and was in contravention of Subdivision 1 of Section 10 of Article 1 of the Constitution of the United States, which prohibits the passage by the Legislature of any State of any law impairing the obligation of contracts.

Refused. A. C.

16. The repeal of the Law of 1853 by the law of 1909, was not within any power or in the exercise of any right of the Legislature of the State of New York to amend, alter or repeal laws previously enacted. No right to amend, alter or repeal Chapter 462 of the Laws of 1853, was reserved therein, nor was the right or power to amend, alter or repeal it embraced in any general power of such legislature to amend, alter or repeal statutes previously enacted.

Refused. A. C.

[61] 17. By the contract of December 3rd, 1852, between the city of Troy, the Troy Union Railroad Company and the other railroad companies named in, and parties to, such contract, such contract, by Chapter 462 of the Laws of 1853, ratifying and approving the exemption of the property of The Troy Union Railroad Company in the city of Troy to the extent provided for in such contract, and by performance of such contract by The Troy Union Railroad Company and the other railroad companies named therein and parties thereto, Chapter 462 of the Laws of 1853 became and thereafter was an irrepealable law and was so irrepealable when Chapter 201 of the Laws of 1909 was enacted.

Refused. A. C.

18. The stipulations and orders made and entered relative to the assessment made by the city of Troy or by the State Board of Tax Commissioners of the State of New York prior to the year 1910 do not constitute a former adjudication of the questions presented herein relative to the assessment of 1911.

Found. A. C.

19. The assessment of The Troy Union Railroad Company by the assessors of the city of Troy in and for the year 1911, which is the subject of review herein, was and is erroneous, illegal and void because its property in the city of Troy was, when such assessment was made, exempt from assessment for the purposes of taxation therein and in the County of Rensselaer to or for any amount in excess of $30,000. Such assessment should therefore be stricken from the assessment roll and the tax levied thereon cancel-ed and re-
462 funded or reduced to $30,000 and the tax thereon in excess of the tax on $30,000 should be refunded.

Refused. A. C.

20. The assessment imposed upon and made against the New York Central and Hudson River Railroad Company by the assessors of the city of Troy in and for the year 1911 for an interest in the property described in such assessment, was erroneous and illegal, and should be stricken from the assessment roll of the city of Troy for the year 1911, and all taxes levied thereon under such assessment by the City of Troy should be canceled.

Refused. A. C.

21. The prayer of the New York Central and Hudson River Railroad Company in its petition for a writ of certiorari to review such assessment, should be granted and said company should recover from the defendants the costs and disbursements of this proceeding.

Refused. A. C.

22. I therefore direct that judgment be entered in accordance with the foregoing Findings of Fact and Conclusions of Law.

Refused. A. C.

463 *Request to Find of Troy Union Company and Indorsement Thereon.*

Supreme Court, Rensselaer County.

THE PEOPLE ex Rel. TROY UNION RAILROAD COMPANY, Relator,

against

G. FRANK MEALEY and Others, as Assessors of the City of Troy, and Hiram W. Gordinier, as Comptroller of the City of Troy, New York, Defendants.

Requests to Find Submitted in Behalf of The Troy Union Railroad Company, the Relator Above Named.

1. The Troy Union Railroad Company, the relator, is a domestic railroad corporation organized under the General Railroad Act

Chapter 140 of the Laws of 1850. It was organized July 21, 1851. Its name stated in its Articles of Association was The Troy Union Railroad Company; its capital was thirty thousand dollars; its corporate existence was to be one hundred years; and its purpose was to construct, maintain and operate a railroad for the conveyance of persons and property, pursuant to the general railroad law of 1850, in and through the whole or a portion of the city of Troy, with one or more tracks, to be located pursuant to the provisions of "An act to authorize the city of Troy and certain railroad corporations to subscribe to, and become the owners of, stock for the construction of a railroad through the whole or some portion of
464 the city of Troy," passed June 20, 1851, which railroad was to be wholly within the city of Troy and not to exceed three miles in length.

Found. A. C.

2. In the year 1911, G. Frank Mealey, George Spence, Jr., George B. Walker and Silas Downs, Jr., were the general assessors of the city of Troy, a municipal corporation, and constituted the Board of Assessors of that city for that year, and H. W. Gordinier was, during that year, the Comptroller of that city.

Found. A. C.

3. The defendants constituting the Board of Assessors of the city of Troy in the year 1911, in making assessments of the property in that city for that year for the purposes of taxation, inserted in the assessment roll of said city the following assessment against the relator:

Found. A. C.

"Third Ward.

Troy Union Railroad Company; Boston & Maine Railroad Co.; Delaware & Hudson Co.; New York Central & Hudson River Railroad Co.

The lands of road-bed, and adjacent thereto, in the several wards of the city, with rails, superstructures, depot building and appurtenances, being all the railroad property in the city of Troy, located between Madison St. on the south, Hoosick St. on the north, and the approach of the Delaware & Hudson Co. on the west, except that portion assessed as franchises lying in public streets.
465 $1,000,000."

4. July 21, 1911, which was one of the days whereon complaints might be made to such Board of Assessors with reference to assessments made by them, the relator herein filed with said Board of Assessors a written objection to said assessment, stating the grounds of such objection as follows:

(*a*) That the same was erroneous and illegal, in that the property described in the assessment complained of was the property of the Troy Union Railroad Company and was not, nor was any part

of it, the property of the Boston & Maine Railroad, the Delaware & Hudson Company and the New York Central and Hudson River Railroad Company, or of either of said companies, and they had no interest therein except such interest as they had as stockholders of the Troy Union Railroad Company, and, therefore, such assessment was erroneous and illegal because it was not made against the owner of the property assessed.

(*b*) That said assessment was erroneous, illegal, unlawful and excessive for the reason that by the laws of the State of New York the amount at which the property described in the assessment was limited in its value for the purposes of taxation.

Found. A. C.

(*c*) That by a contract between The Troy Union Railroad Company and the city of Troy the property of such company was exempted from taxation beyond the amount of its capital stock which was then and always had been $30,000; that by the laws of the State of New York theretofore enacted, and then in force, it was provided that the assessment of the property of the Troy Union Railroad Company for the purposes of taxation should not exceed the
466 amount of the capital stock of that company which always has been $30,000; that such contract and such laws of the State of New York are binding upon the city of Troy in levying said assessment and could not be impaired by any subsequent legislation and any act thereafter passed, affecting said contract or repealing or attempting to repeal said laws of the State of New York was unconstitutional, illegal and void; and that an assessment of the property of the Troy Union Railroad Company in excess of $30,000 was illegal and void.

(*d*) That by the State Board of Tax Commissioners of the State of New York a part of the property of the Troy Union Railroad Company was assessed $215,400 as a special franchise, which included a portion of the tangible property of that company as well as its intangible right to cross and occupy with its railroad streets and public places in the city of Troy, and the assessment imposed by the Board of Assessors of the city of Troy upon the property of that company was in fact and effect double assessment to the extent that its tangible property was included in such special franchise assessment and such assessment was therefore illegal and void. Proof of the facts stated in said objection was offered, if required by said Board of Assessors, but the same was not required. The objection so made to said assessment was overruled and said Board of Assessors of the city of Troy thereafter completed the assessment roll of the city of Troy for the year 1911, retaining the assessment against the relator herein on said roll as was originally made. The assessment so made and retained on said assessment roll is the one mentioned in the petition of the relator for a writ of certiorari herein.

467 5. In and prior to the year 1851, four railroads had their respective termini in River street in the city of Troy. That street was then and has since continued to be one of the principal

business streets of that city. The railroads so terminating in River street were those of the Rensselaer & Saratoga, Troy and Boston, Schenectady and Troy and Troy and Greenbush railroad companies. They were not connected and cars were hauled on them in that street by horses. There was at that time no union station in the city of Troy. Prior to December 3rd, 1852, the road of the Troy and Greenbush Railroad Company was leased and thereafter operated by the Hudson River Railroad Company. Prior to July 1st, 1858, the road of the Schenectady and Troy Railroad Company was leased and thereafter operated by the New York Central Railroad Company.

Found. A. C.

6. In the year 1851, as the result of negotiations between the Common Council of the city of Troy and representatives of the four railroad companies having their tracks and terminals in River street, the city of Troy and such railroad companies agreed upon a plan for the construction and operation of a single union railroad through a portion of the city of Troy away from River street for the common use of said companies, by which the four railroads would be connected for the construction and maintenance of a union station and for the removal of their tracks from River street and the abandonment of that street as a terminus for such roads. The substantial parts of the plan so agreed upon and of the things done to make it effective and secure the results contemplated are contained in
468 the requests following numbered 7, 8, 9 and 10.

Found. A. C.

7. By Chapter 255 of the Laws of 1851, which became a law June 20, 1851, the Legislature of the State of New York authorized the organization of a new railroad company to construct a railroad through some portion of the city of Troy, authorized the City of Troy to issue its bonds to an amount equal to the cost of the construction of such road, the proceeds of which were to be used therefor, authorized the City of Troy and the four railroad companies having their business termini in that city to subscribe for, and become the owners of, stock in a railroad corporation to be organized under the then general railroad law for the construction of a railroad through the whole or a portion of the City of Troy, and provided for the appointment of commissioners to obtain subscriptions to the stock of such new company, and to locate the line of such new railroad.

Refused except as found in decision. A. C.

8. July 21st, 1851, The Troy Union Railroad Company, the relator in this proceeding, was organized under the general railroad law of the State of New York, Chapter 140 of the laws of 1850, pursuant to the law of 1851, referred to in the preceding finding, by filing its Articles of Association as required by said general railroad law that day. Its capital stock was therein fixed at $30,000 and the

railroad to be constructed by [illegible] was the one provided for in the law of 1851.

Found. A. C.

9. December 3d, 1852, a written contract, duly executed
469 by the parties thereto, was entered into by and between the City of Troy, The Troy Union Railroad Company, the Schenectady and Troy, Hudson River, Rensselaer and Saratoga and Troy and Boston Railroad Companies, in and by which it was contracted and agreed as follows:

Found. A. C.

(*a*) The Troy Union Railroad Company should construct and maintain a railroad in the City of Troy with two or more tracks, as the same had been located by the commissioners named in the law of 1851 and approved by the Common Council of the City of Troy, of which location a survey was attached to, and formed a part of such contract, the occupation of streets by such railroad was assented to by the City of Troy, and the right to occupy a portion of Sixth street for its passenger house was also assented to by the city.

(*b*) The four railroad companies other than The Troy Union Railroad Company, parties to such contract, should take an equal amount of the stock of the Troy Union Railroad Company so as to fill up its capital of $30,000.

(*c*) The City of Troy should issue its bonds for a sufficient amount to pay the cost of constructing the proposed railroad and station, sell them and pay over their proceeds to The Troy Union Railroad Company to be used by that Company in constructing its road and station. The Troy Union Railroad Company should secure the payment of such bonds and the interest accruing thereon by executing to the City of Troy a mortgage on its road, buildings, property rights and franchises, and the four other railroad companies should
470 each execute to the City of Troy an agreement to indemnify it against default by The Troy Union Railroad Company on its mortgage, the amount of such indemnity as to each company being $125,000.

(*d*) The Troy Union Railroad Company should raise the money needed by it for maintaining the road and station after their construction was completed, and for the payment of the interest upon and principal of, the city bonds issued to obtain the money required for constructing such road and station, by tolls to be levied upon and paid by the four companies using the road and station, each having equal use thereof. Such tolls were to be based on the cars moved upon and over such roads respectively and their rate or the method of fixing them was in said contract provided.

(*e*) The City of Troy was to join in an application to the Legislature that The Troy Union Company should, for the purposes of taxation in the City of Troy and County of Rensselaer, be exempt from taxation upon any amount exceeding the then amount of its capital stock (which was $30,000), and if such law should not be

passed, the City of Troy agreed to refund to The Troy Union Railroad Company an amount equal to the city taxes imposed on that Company for any valuation exceeding its then capital stock.

(*f*) The stock and property of The Troy Union Railroad Company should belong equally to the four railroad companies, parties to that contract, subject to the mortgage to the City of Troy and payment of the bonds of the city, and said railroad companies should have equal rights and privileges in the track and station of The Troy Union Railroad Company, subject to such reasonable
471 police regulations for the use of the road and station as that company might prescribe.

(*g*) No other railroad track should be located and used, except that of The Troy Union Railroad Company, between Hoosick and Adams streets, in the City of Troy, except tracks from those of that company to the respective freight houses of the other companies and to connect with those on the bridge of the Rensselaer and Saratoga Railroad Company over the Hudson River.

10. Following the execution of the contract mentioned in the preceding finding the Legislature of the State of New York passed the act following which became a law June 24th, 1853.

"Chapter 462.

An Act Providing for the Taxation of the Union Railroad Company in Troy.

Refused except as found in decision. A. C.

Sec. 1. For the purposes of taxation in the City of Troy, and in the County of Rensselaer, the property of the Troy Union Railroad Company shall be estimated and assessed (as the Common Council of said City of Troy, by its contract with said Company, dated December third, eighteen hundred and fifty-two, agreed that the same should be), at the amount of the capital stock of said company, and no more; and (as agreed in said contract), the bridge of the Rensselaer and Saratoga Railroad Company over the Hudson River at Troy, shall, for the purpose of taxation, not be estimated or assessed at any increased valuation by reason of the addition thereto, agreed for in said contract.
472 Sec. 2. This act shall take effect immediately."

Such statute was the one contemplated and provided for in the contract between the city of Troy, The Troy Union and other railroad companies hereinbefore found and was a material part of the plan agreed upon by and between the city and the railroad companies then having their termini in River street as hereinbefore found, in that it was in part the consideration for the agreement of the four railroad companies to give up their respective rights to have and maintain their tracks in River street and to incur the expense of constructing and thereafter maintaining a union road and station away from River street for their common use.

11. Following the acts of the Legislature of the State of New York the organization of The Troy Union Railroad Company and the execution of the contract between the city of Troy and The Troy Union and the four other Railroad Companies named therein and parties thereto, which matters have been heretofore found, The Troy Union Railroad Company purchased the land required for the construction of the proposed union railroad and station, taking the title to such land in its name, and constructed such union railroad and station thereon and in and across the streets of the city of Troy pursuant to the assent of said city contained in said contract of December 3rd 1852; the city of Troy issued its bonds to the aggregate amount of $707,000, which was the cost of such construction, the proceeds of which bonds were received by The Troy Union Railroad Company and were used by it for the purchase of land therefor and the construction of such union railroad and station; The Troy Union
473 Railroad Company executed and delivered to the city of Troy a mortgage upon its roads, property and franchises to secure the payment of the interest on and principal of the bonds of the city of Troy so issued; and the four railroad companies, parties to said contract of December 3rd, 1852, each executed and delivered to the city of Troy separate agreements in and by which they each indemnified the city of Troy against any default of The Troy Union Railroad Company upon its mortgage to said city to the extent of one-fourth of the amount secured thereby, not, however exceeding $125,000.

Refused except as found in decision. A. C.

12. The proposed union railroad and station constructed by The Troy Union Railroad Company as hereinbefore found were completed on or before January 1st, 1855, and were thereafter used in common by the said four railroad companies whose several and respective railroads previously terminated in River street, that street was thereupon given up by them as a terminal for their several and respective railroads and neither of said railroads, at any time thereafter asserted or claimed any right in, along or upon River street for their several and respective railroads.

Found. A. C.

13. Prior to the year 1857 The Troy Union Railroad Company made default in paying the interest on the bonds issued by the city of Troy as hereinbefore found and in making such payments on account of the principal thereof as was required in and by said contract of December 3rd, 1852. Such default on its part resulted
from the failure of the method of raising the money required
474 for those purposes and for maintaining the union railroad and station provided in said contract to accomplish the result contemplated therein, in that the number of cars operated by the respective companies over such railroad at the rate of tolls fixed in such contract did not produce an amount of money equal to the needs of The Troy Union Railroad Company for the purposes stated above in this finding.

Found. A. C.

14. In consequence, and as the result, of such default, the city of Troy in 1857 commenced an action in the Supreme Court of the State of New York to foreclose the mortgage hereinbefore found to have been executed and delivered to said city. In the same action was included the indemnity agreements of the four railroad companies parties to the contract of December 3rd, 1852, hereinbefore found, and such railroad companies were made parties defendants in said action with The Troy Union Railroad Company. For the purpose of settling that action and the matters connected with it growing out of the relations between The Troy Union Railroad Company and the four other railroad companies parties to said contract of December 3rd, 1852, and the city of Troy, the city of Troy, The Troy Union Railroad Company and the four other railroad companies then owning the stock of The Troy Union Railroad Company entered into another contract in writing with reference to said union railroad and station and the rights and obligations of the parties thereto in connection therewith. Such contract was thereafter known as the Reformed Contract of 1858. It bore date July 1st, 1858, but was in fact executed by the parties thereto
475 in November of that year. The substantial parts of that contract were as follows:

Found. A. C.

(*a*) The Troy Union Railroad Company might continue, maintain and operate its railroad in the city of Troy as then located and constructed according to the map and survey thereof, a copy of which was attached to the contract and was the same as the survey attached to the contract of December 3rd, 1852, and might continue to occupy, as theretofore, the land on each side of Sixth street for a passenger house (later called station), with the course of that street changed so as to pass along either or both sides of the passenger house (station), as might be desired by The Troy Union Railroad Company.

(*b*) The Troy Union Railroad Company should raise by monthly assessments upon the four railroad companies named in said contract whatever money was required to pay its debts and future expenses, such debts consisting of its obligation to the city of Troy to pay the principal of, and interest on, its bonds issued as hereinbefore found, to provide the money required for the construction of its railroad and station, and such future expenses being those incurred in maintaining its railroad and station and the rent to be paid to the Rensselaer and Saratoga Railroad Company for the use of its bridge over the Hudson River, of which monthly assessments each of the four railroad companies named therein should pay one-fourth. In case any one of them failed to pay its share of such monthly assessments, The Troy Union Railroad Company, in addition to all other
476 legal remedies, might exclude the company so in default for a period exceeding thirty days from all use of The Troy Union Railroad, its tracks, passenger house (station), and other property until such payment should be made.

(*c*) Each of the four companies, parties to the contract, should have equal rights and privileges in the tracks, passenger house (station) and other property of The Troy Union Railroad Company, except such reasonable rules, regulations and rent charges for offices as The Troy Union Railroad Company might from time to time prescribe therefor.

(*d*) The Troy Union Railroad Company should pay the Rensselaer and Saratoga Railroad Company an annual rent of $11,500, in monthly installments, for the use of the bridge of that company across the Hudson River by the four railroad companies parties to said contract, who were therein authorized to use it, such rent to be credited in the books of The Troy Union Railroad Company to the Rensselaer and Saratoga Railroad Company as cash.

(*e*) The New York Central and Hudson River Companies should each own one-fourth part and the Rensselaer and Saratoga and Troy and Boston Companies should each own one-fifth part of the railroad, passenger house (station) and other property rights and franchises of The Troy Union Railroad Company, subject to the lien of the mortgage thereon to the city of Troy, hereinbefore found, which mortgage should continue and remain in full force and effect, and it was expressly covenanted and agreed by the parties to such contract that nothing therein contained should be deemed, taken or construed to affect or in any way impair the validity, force and effect of such mortgage as a security for so much of the principal
477 and interest secured thereby as was assumed and agreed to be paid in the settlement of the suit to foreclose such mortgage by the several agreements of the New York Central, Hudson River, Rensselaer and Saratoga and Troy and Boston Railroad Companies executed to the city of Troy, of even date with said contract, the said city of Troy being at liberty to make such separate contracts with each of them as to the portion of the debt and interest due from each of them and to make such arrangements for the payment thereof as it deemed advisable.

(*f*) In case of the foreclosure of said mortgage because of default in the payment of the principal or the interest thereon, the proceeds of any sale had in pursuance thereof should be applied ratably in proportion to the several amounts assumed of the original debt by each of said railroad companies so that each would be credited on the amount of said debt assumed by it in proportion to the amount thereof so assumed by it until their respective amounts were paid if such proceeds were sufficient for that purpose and the balance, if any, of the ratable share of each should be paid to it.

(*g*) The Troy Union Railroad Company should thereafter, upon the request of the city of Troy, execute and deliver to it a further mortgage upon its capital stock, franchises and property for an amount not exceeding the whole amount owing from said several railroad companies to the city of Troy to be held as further security for the performance of the covenants, conditions and agreements on the part of said several railroad companies to and with said city of Troy.

(*h*) If default should at any time be made by any of said rail-

road companies, parties thereto, in the payment of any in-
478 stallment of principal or interest to the city of Troy as provided therein by reason of the insolvency of such defaulting company, or if upon suit brought against such defaulting company judgment should be recovered and execution issued thereon should be returned unsatisfied in whole or in part, thereupon and in either case, the right of such defaulting company to use the tracks and other property of The Troy Union Railroad Company should cease and thereupon its title and interest in said Union Railroad should vest in the city of Troy which might, in addition to all other legal remedies, apply to the proper court for an injunction to restrain such defaulting railroad company from using The Troy Union Railroad Company's tracks, passenger house (station) and other property. It was, however, therein provided with reference thereto that if at any time during the continuance of The Troy Union Railroad Company such defaulting company or its successor should assume and pay all liabilities then accrued or which might thereafter accrue against such defaulting company to the city of Troy, with interest thereon, or if any one of the parties thereto which might be recognized should pay and assume all liabilities then accrued or which might thereafter accrue against said Company in favor of the city of Troy as agreed in the settlement of said suit to foreclose said mortgage, such defaulting company or its successors or reorganized company should be restored to all the rights, ownership and privileges in said Troy Union Railroad which said defaulting or reorganized company had therein prior to such default.

(*i*) The four companies named, parties to the contract herein found, might each use the railroad of The Troy Union Rail-
479 road Company for the passage of cars propelled by animals, steam or any mechanical power at not exceeding fifteen miles per hour, and The Troy Union Railroad Company should erect swing bars at street crossings. In case of its default in so doing the city of Troy might erect them and collect the expense thereof from The Troy Union Railroad Company, which was to be the only penalty incurred by that company or by any of the other railroad companies, parties to such contract, for such default.

(*j*) If the law passed by the Legislature of the State of New York June 24th, 1853, relative to the taxation of the property of The Troy Union Railroad Company in Troy, should at any time be repealed, the Common Council of the city of Troy should join in an application to the Legislature of the State of New York that The Troy Union Railroad Company be exempt from taxation upon any amount exceeding the then amount of its capital stock, and if such law should not be passed, the Common Council of the city of Troy should refund to The Troy Union Railroad Company an amount equal to the city taxes imposed on The Troy Union Railroad Company for any valuation exceeding its then capital stock.

(*k*) The stock of The Troy Union Railroad Company should belong one-fourth part to each of the four railroad companies, parties to said contract, subject to an equal proportional contribution there-

from if another railroad should come into the city of Troy and ac-
cept of the terms and provisions therein provided therefor.

(*l*) The Troy Union Railroad Company should prescribe
480 all necessary police regulations as to the use of the track and
passenger house (station) and there should be no other rail-
road between Hoosick and Adams streets in the city of Troy except
tracks from that of The Troy Union Railroad Company to the freight
houses of the respective railroads and to the tracks on the bridge over
the Hudson River.

(*m*) Another railroad company that might thereafter run its trains
to or from the city of Troy might on equal terms and with equal privi-
leges and ownership use the railroad tracks, passenger house (sta-
tion) and other property constructed by The Troy Union Railroad
Company. Such equal terms *was* therein construed to mean the pay-
ment of its numerical proportion (each company being counted one),
of the bridge tolls for the use of the bridge over the Hudson River
and its equal proportion of the original debt created for the construc-
tion of The Troy Union Railroad and of all assessments for main-
taining the same. The amount of such original debt which might
be assumed by such new company should be paid to the city of Troy
to be applied by it; two one-fourth parts to the respective obligations
of the New York Central and Hudson River Railroad Companies held
by the city of Troy and the remainder thereof to said companies
respectively; the other two-fourth parts, first to the balance of the
two-fourths of the original debt not assumed by the Rensselaer and
Saratoga and Troy and Boston Railroad Companies and the remain-
der upon the obligations of each of those companies held by the city
of Troy for a portion of such original debt. Such obligations were
of the New York Central and Hudson River Railroad Companies
each $175,000 of the original debt and $30,000 of accrued
481 interest thereon, of the Rensselaer and Saratoga Railroad
Company, $125,000, and of the Troy and Boston Railroad
Company, $100,000.

15. By the contract of July 1st, 1858, hereinbefore found the con-
tract of December 3rd, 1852, was annulled and those parts of that
contract not in terms or in effect reproduced in the later contract upon
its execution ceased to be of effect.

Found. A. C.

16. Following the execution of the contract of July 1st, 1858, and
under its provisions, The Troy Union Railroad Company, to the time
the assessment herein complained of was made, continued to main-
tain the railroad and station previously constructed and maintained
by that company, employing the men and purchasing the materials
required for that purpose or contracting for the work needed to keep
the railroad and station in suitable and proper condition for use.
During that period it has had the supervision and control of the
station and of the movement of trains in and about it; it has erected
and maintained gates at street crossings and employed gatemen and
flagmen at such crossings; it has erected and maintained signal towers

along such railroad and employed the men to occupy and operate the same; it has kept the station insured in its own name as owner, and during a portion of the time following the execution of such contract and before the final payment of its mortgage to the city of Troy, assigned the policies of insurance thereon to the city of Troy as collateral security for its mortgage; it has conveyed some portion of the land acquired prior to the execution of the contract of July 1st,
482 1858, subsequent to its execution; it has leased portions of the station not required for the common use of the four railroad companies using said railroad and station, and has leased land not occupied by the railroad and station with the privilege of erecting buildings thereon; it has rebuilt the station in part or entirely, once in 1859, again in 1862, following its partial destruction by fire, and again in 1901 and 1902, which rebuilding then was at an expense of $250,000; such last constructed station has been and is kept insured by it in its own name as owner, the policies for which insurance contain a provision that they will be void if the interest of the insured in the property covered thereby was or is not truly stated therein; and at all times during the period from the execution of the contract of July 1st, 1858, to the making of the assessment complained of herein in 1911, fifty-three years, The Troy Union Railroad Company has, to the kpowledge, and with the acquiescence, of the city of Troy and the railroad companies named in said contract and their successors, dealt with the railroad, station and other property acquired and constructed by that company as its owner.

Found. A. C.

17. No evidence was introduced or offered showing that the contract of July 1st, 1858, was at any time delivered by The Troy Union Railroad Company to the four railroad companies named therein and parties thereto or to any one of them with any intent or purpose on its part of thereby transferring to, and vesting in, such companies or any one of them, its title to said railroad, station and other property or any part thereof. Nor was any evidence introduced or
483 offered showing that The Troy Union Railroad Company or any one of the four railroad companies named in said contract and parties thereto, or their successors, at any time after the execution of such contract asserted or claimed by words or acts the title to any part of the railroad, station and other property of The Troy Union Railroad Company was transferred to, and vested in, said railroad companies or any one of them by said contract of July 1st, 1858. All of the acts and declarations of The Troy Union Railroad Company and each of the other railroad companies named therein and parties thereto, and of their successors, in connection with, and in relation to, said railroad, station and other property, have been at all time- since the contract of July 1st, 1858, was executed to the time the assessment herein complained of was made consistent with, and indicative of, the ownership of the whole thereof by The Troy Union Railroad Company and inconsistent with, and not indicative of, any other or different ownership.

Found. A. C.

18. No evidence was introduced or offered showing that any other contract or instrument relative to The Troy Union Railroad Company's railroad, station and other property or to the title thereto or to any part thereof was at any time after the execution of the contract of July 1st, 1858, executed, or that the parties thereto acted or assumed to act under any other or different contract, and it is hereby found as a fact such contract is the instrument under and in accordance with which the parties thereto have at all times acted relative to, and in connection with, said railroad, station and other property and the maintenance and use thereof.

484

Found. A. C.

19. In 1871 the railroad of the Rensselaer and Saratoga Railroad Company was leased to The President, Managers and Company of The Delaware and Hudson Canal Company, the name of which company was, by Chapter 469 of the Laws of 1899, changed to The Delaware and Hudson Company. Subsequent to the execution of the contract of 1858 and prior to the assessment complained of herein The New York Central and Hudson River Railroad Companies were consolidated and became The New York Central & Hudson River Railroad Company; the Troy and Boston Railroad Company was consolidated with the Fitchburg Railroad Company and the railroad of such consolidated railroad company was leased to the Boston and Maine Railroad Company. By such consolidation and leases the railroad companies, other than the The Troy Union Railroad Company, against whom the assessment of 1911, complained of herein, was made became the owners of the respective interests of the four railroad companies named in, and parties to, the contract of 1858, in the stock of The Troy Union Railroad Company and were such owners thereof when said assessment was made.

Found. A. C.

20. The mortgage given by The Troy Union Railroad Company to the city of Troy to secure the payment of the principal of, and interest on, the bonds issued by the city of Troy to provide money for the construction of the railroad and station of that company was fully paid prior to July 26th, 1901, and on that day was discharged of record in the Rensselaer County Clerk's office. Thereupon the several agreements of the four railroad companies named in, and parties to, the contract of July 1st, 1858, executed to the city of Troy assuming the respective portions of the original debt to the city of Troy and interest thereon, hereinbefore found, ceased to have force and effect as obligations of said companies respectively.

485

Found. A. C.

21. The Troy Union Railroad Company has since its organization in 1852, retained and continued its corporate existence, and was in the year 1911 a duly organized, existing and acting corporation

having legal right to acquire, hold and own real estate used and to be used for railroad purposes. Its capital stock has been at all times since its organization and at the time of the assessment complained of herein was $30,000 and no more.

Found. A. C.

22. Each year since the organization of The Troy Union Railroad Company that company has been assessed on the assessment rolls of the city of Troy for and upon its property therein, $30,000. No change was made in such assessment following the execution of the contract of July 1st, 1858. Nor was any attempt made by the city of Troy to make any change therein until the years 1886 and 1887, which attempt and its result are hereinafter found. Following such attempt to change the assessment in amount in the years 1886 and 1887 and its failure, the assessment of The Troy *Troy*
486 Union Railroad Company was continued as theretofore at $30,000, and that company has from the beginning of its existance paid the taxes levied by the city of Troy on such assessment of $30,000.

Refused except as found in decision. A. C.

23. In the years 1886 and 1887 the then assessors of the city of Troy assessed The Troy Union Railroad Company for its railroad, station and other property in the city of Troy, $783,984.00 in each year. The Troy Union Railroad Company objected to such assessments on the ground that by the contract of December 3rd, 1852, and the Act Chapter 462 of the Laws of 1853, it was exempted from assessment for the purposes of taxation upon its property in the city of Troy, which consisted of its railroad, station and other property, to any amount in excess of the amount of its capital stock which was $30,000, and in due form of law instituted in the Supreme Court of the State of New York proceedings to review such assessments, which proceedings resulted in their reduction to $30,000 in each year, the amount stated and limited in said contract of December 3rd, 1852, and said act of 1853, which act was therein held to be valid and controlled the assessment of the property of The Troy Union Railroad Company in the city of Troy. Such decision of the Supreme Court was in all respects affirmed by the Court of Appeals of the State of New York prior to the year 1907.

Found. A. C.

24. In the years 1907, 1908 and 1909, the then assessors of the city of Troy assessed The New York Central & Hudson River
487 Railroad Company $500,000 upon and for its alleged one-half undivided interest in the railroad tracks, superstructures, depot, buildings and appurtenances located between Madison street on the south, Hoosick street on the north, and the approach of The Delaware and Hudson Company's bridge on the west, which property covered included and embraced the railroad, station and other prop-

erty of The Troy Union Railroad Company. In the same years the assessors of the city of Troy assessed The Delaware and Hudson Company and the Boston & Maine Railroad each $200,000 upon its alleged one-fifth undivided interest in the property described in the previous part of this finding.

Found. A. C.

25. The three railroad companies named in the preceding finding, The New York Central & Hudson River Company, The Delaware and Hudson Company and the Boston & Maine Railroad, each, in each of said years, 1907, 1908 and 1909, objected to such assessments on the ground that the railroad tracks, depot and other property in the city of Troy therein mentioned were constructed, maintained and owned by The Troy Union Railroad Company, and the interests of the three railroad companies named in said assessments therein were as stockholders of The Troy Union Railroad Company and not otherwise, and by the Act, Chapter 462 of the Laws of 1853, The Troy Union Railroad Company was exempted from assessment for the purposes of taxation upon its property in the city of Troy, which consisted of, included and embraced its railroad, station and other property, to any amount in excess of the amount of its
488 capital stock which was $30,000. Said three railroad companies previously named in this finding in due form of law instituted proceedings in the Supreme Court of the State of New York to review said assessments.

Found. A. C.

26. In the year 1901 and in each of the years following to and including 1909, the State Board of Tax Commissoiners of the State of New York assessed The Troy Union Raliroad Company under the franchise tax law for special franchises consisting of its occupation of streets in the city of Troy with and for its railroad and station, which assessments differed in amount in different years and were in each year in excess of the $30,000 The Troy Union Railroad Company was assessed by the assessors of the city of Troy. Such assessments were objected to by the Troy Union Railroad Company on the ground that it was exempted from assessment for the purposes of taxation in the city of Troy to and for any amount exceeding $30,000, the amount of its capital stock, and as the assessments so made for special franchises were all in excess of that amount they were erroneous, illegal and void. Such objections were each year overruled by said State Board of Tax Commissioners and the assessments so made were certified to the City Clerk of the city of Troy and were thereupon entered on the assessments rolls of that city. Proceedings were thereupon instituted in the Supreme Court of the State of New York by The Troy Union Railroad Company to review said assessments.

Found. A. C.

27. During the pendency of the proceedings to review
489 the assessments mentioned in the three preceding findings and before the final determination of any one of them a settlement of the then pending litigations relative to the assessment of the property of the Troy Union Railroad Company in the city of Troy, to and including the year 1909, was made between the city of Troy, The Troy Union Railroad Company and The New York Central and Hudson River Railroad Company, The Delaware and Hudson Company and the Boston & Maine Railroad, in and by which the assessments of The Troy Union Railroad Company for special franchises were cancelled, the proceedings instituted by The New York Central & Hudson River Railroad Company, The Delaware and Hudson Company and the Boston & Maine Railroad to review the assessments of 1907, 1908 and 1909 were dismissed, and orders were entered to the effect previously stated in this finding. There was nothing in the settlement so made which in terms or effect barred or precluded The Troy Union Railroad Company or the three other railroad companies or any one of them named in this and previous findings relating to the assessments of 1907, 1908 and 1909, from instituting proceedings subsequent thereto to review assessments of the property of The Troy Union Railroad Company in the city of Troy on the ground that they exceeded $30,000 or were made against other railroad companies than The Troy Union Railroad Company or any other legal ground.

Found. A. C.

28. April 17th, 1909, the Legislature of the State of New York passed an act that became Chapter 201 of the Laws of 1909, and reads as follows:

490 "An Act to Repeal Chapter 462 of the Laws of 1853, Entitled "An Act Providing for the Taxatoin of the Property of the Union Railroad Company in Troy," Passed June 24th, 1852.

Section 1. Chapter 462 of the Laws of 1853, entitled, "An act providing for the taxation of the property of the Union Railroad Company in Troy," passed June 24, 1853, is hereby repealed.

Section 2. This act is not retroactive and shall not be held to apply to or affect any litigation pending at the time it became a law.

Section 3. This act shall take effect immediately."

The act therein named as being repealed is the one passed by the Legislature of the State of New York June 24, 1853, which approved, ratified and confirmed the agreement of the city of Troy contained in the contract of December 3rd, 1852, that the property of The Troy Union Railroad Company in the City of Troy should, for the purposes of taxation therein and in the County of Rensselaer, be assessed at the then amount of its capital stock which was $30,000, and no more, which contract and act have been heretofore found.

Refused except as found in decision. A. C.

29. In the year 1910 the assessors of the City of Troy assessed The Troy Union Railroad Company, the New York Central & Hudson River Railroad Company, The Delaware and Hudson Company and the Boston & Maine Railroad $1,000,000, in form similar to the assessment of the same companies for 1911, which is the subject of review herein. Proceedings in due form of law to review such assessments have been instituted by the companies named therein
491 which are now pending awaiting the determination herein. The taxes levied by the City of Troy on such assessments for the years 1910 and 1911 have been paid by the railroad companies named therein under protest.

Found. A. C.

30. The railroad, station and other property, the title to which was vested in The Troy Union Railroad Company prior to and at the time the contract of July 1st, 1858, was entered into and executed, with such additions thereto and such renewals and improvements thereof as have been made since the execution of such contract, which additions, improvements and renewals have been made by The Troy Union Railroad Company, constitute the property solely of The Troy Union Railroad Company and the only interests of the other railroad companies named in the assessment herein the subject of review, therein, are as stockholders of The Troy Union Rail-Road Company.

Found. A. C.

31. All of the things agreed to be done by and on the behalf of The Troy Union Railroad Company and by the railroad companies that became stockholders therein to carry out and effect the improvement desired by the City of Troy in constructing and thereafter using a single union railroad and station elsewhere than in and on River street for the joint and common use of the railroad companies whose railroads to that time terminated in River street, were done prior to the execution of the contract of July 1st, 1858, and the things contained in the contract of December 3d, 1852, and those contained in the contract of July 1st, 1858, which provided for,
492 and related to, the continued maintenance of such union railroad and station, have been done. Such union railroad and station have been used continuously since January 1st, 1855. The limitation of the assessment of the property of The Troy Union Railroad Company to $30,000 was a substantial and material part of the consideration for the agreements of the railroad companies previously having their termini in River street to enter upon and undertake the improvement resulting in the construction and use of a union railroad and station and for acquisition of property therefor by The Troy Union Railroad Company and the construction and subsequent maintenance of a union railroad and station. The benefits and advantages anticipated by the City of Troy from such improvement have been received and enjoyed by the City of Troy. There has been no offer by the City of Troy to restore the railroad

companies that engaged in and effected such improvement to their former state nor is the City of Troy now able to make such restoration.

Refused except as found in decision. A. C.

Conclusions of Law.

1. The agreement entered into in 1851 between the City of Troy and the four railroad companies then having their termini in River street in that city, which consisted of the Act of the Legislature of the State of New York of 1851, authorizing subscription to stock in a railroad company to be organized to construct a railroad in the City of Troy and the issue of bonds by the City of Troy to
493 provide the money to build such railroad, the organization of The Troy Union Railroad Company pursuant to such act the contract of December 3d, 1852, between the City of Troy, The Troy Union Railroad Company and the other railroad companies then having the termini of their respective railroads in River street, and the act of the Legislature of the State of New York, Chapter 462 of the Laws of 1853, which assented to, ratified and approved the exemption of the property of The Troy Union Railroad Company in the City of Troy from assessment on any amount in excess of its then capital stock which was $30,000, as the City of Troy in such contract of December 3d, 1852, agreed it should be exempted, constituted a valid and binding contract.

Refused. A. C.

2. By the acquisition of the land required therefor and the construction of a union railroad and station upon the line and route located by the commissioners designated in the Act of 1851 for that purpose and approved by the Common Council, The Troy Union Railroad Company became vested with the title to the land so acquired and to such union railroad and station. Such acquisition and construction constituted and were performance by The Troy Union Railroad Company of the contract of December 3d, 1852.

Found. A. C.

3. The exemption of the property of The Troy Union Railroad Company in the City of Troy from assessment therein for the purpose of taxation for any amount in excess of $30,000 was one of the considerations for the performance by The Troy Union Rail-
494 road Company of its contract with the City of Troy expressed in the instrument of December 3d, 1852, and for the performance by the four railroad companies named in, and parties to that contract, whose railroads then terminated in River street, of their respective obligations therein contained. Such exemption of the property of The Troy Union Railroad Company from assessment to the extent stated in said contract of December 3d, 1852, and said act of the Legislature of the State of New York of 1853, was not a

gratuity but upon performance by The Troy Union Railroad Company and the four other railroad companies named therein and parties thereto, of the contract of December 3d, 1852, became and was and thereafter continued to be a contract right based upon an adequate consideration for its support.

Refused. A. C.

4. The Legislature of the State of New York, by Chapter 462 of the Laws of 1853, assented to, approved and ratified such exemption and thereby became a party to said contract of December 3d, 1852 in respect to, and to the extent of such exemption. Upon performance of such contract by the parties thereto the Legislature of the State of New York had no legal right to thereafter withdraw such assent, approval and ratification or repeal the act in and by which such assent, approval and ratification was granted.

Refused. A. C.

5. The construction and use by The Troy Union Railroad Company and the other railroad companies having their terminals
495 in the City of Troy of a union railroad and station in that city elsewhere than in and upon River street, and the discontinuance of their respective tracks in that street and its abandonment as a terminal for such railroads, were of material and substantial benefit and advantage to the City of Troy and constituted an adequate consideration for the agreement of that city that the property of The Troy Union Railroad Company therein, which property was acquired and constructed for the purpose of effecting such change in the location of said railroad, should be exempt from assessment for the purpose of taxation for any amount in excess of $30,000, the amount of its capital stock.

Refused. A. C.

6. Prior to, and at the time of, the execution of the contract of 1858, the right of The Troy Union Railroad Company to have its railroad, station and other property in the City of Troy exempted from assessment for the purpose of taxation to or for any amount in excess of $30,000, had become and was fixed by contract and performance thereof and could not be legally taken away either by the City of Troy or the Legislature of the State of New York or by both combined.

Refused. A. C.

7. The contract dated July 1st, 1858, was not in form or legal effect a deed or instrument conveying the title of The Troy Union Railroad Company to its railroad, station and other property in the City of Troy or any part thereof, to the New York Central, Hudson River, Rensselaer and Saratoga and Troy and Boston Rail

road Companies, or to any one of said companies, and neither of said railroad companies thereunder or thereby acquired title to any part of such railroad, station and other property.

Refused. A. C.

8. The title of The Troy Union Railroad Company to its railroad, station and other property in the City of Troy remained, after the execution of the contract of July 1st, 1858, vested in The Troy Union Railroad Company to the same extent it was so vested in that company prior to, and at the time, such contract was executed. The title thereto has at all times since remained, and at the time the assessment of 1911, here the subject of review, was made, was vested in that company.

Refused. A. C.

9. At the time the assessment of 1911, here the subject of review, was made, neither the New York Central and Hudson River Railroad Company, The Delaware and Hudson Company or the Boston and Maine Railroad owned any part of the railroad, station and other property of The Troy Union Railroad Company, which was the property described in, and covered by, such assessment, and each of the assessments against such companies therefor were erroneous, illegal and void.

Refused. A. C.

10. The provision in the contract of July 1st, 1858, as to the ownership by the parties therein named of the property of The Troy Union Railroad Company, was not and was not intended to be a declaration of present ownership thereof, but was and was
497 intended to be a declaration of the ownership of the respective parties named therein in the future, in the event of the sale of such property under the mortgage thereon or the discontinuance of The Troy Union Railroad Company as an existing corporation, neither of which contingencies has at any time occurred, and such declaration of ownership thereof has therefore at no time taken effect.

Refused except as found in decision. A. C.

11. The right of The Troy Union Railroad Company to have its property in the City of Troy exempted from assessment for the purposes of taxation therein except to the amount of $30,000, existing when the contract dated July 1st, 1858, was executed, was not waived, changed or modified by such contract or any provision therein and remained in full force and effect after the execution of such contract as before its execution, a contract right resting upon adequate consideration.

Refused. A. C.

12. The agreement of the City of Troy contained in said contract of July 1st, 1858, that if the law of 1853, relative to the taxation of the property of The Troy Union Railroad Company in Troy, should be repealed the City of Troy would join in an application to the Legislature for the passage of a law restoring such exemption, was not ultra vires, the City of Troy had then received and was enjoying the benefits resulting from the performance of the contract of which such exemption was a material part, and such agreement on its part had adequate consideration for its support.

Refused. A. C.

498 13. The annulment of the contract of December 3d, 1852, by the contract of July 1st, 1858, did not annul or render inoperative any of the provisions of the contract of December 3d, 1852, which were in terms or in effect embraced in the contract of July 1st, 1858. Nor did it take away, impair or affect the contract rights of the parties thereto then existing which had become and were at that time fixed and established by the performance of the things required to be performed by such contract of December 3d, 1852.

Found. A. C.

14. The contract of December 3d, 1852, and the contract of July 1st, 1858, have been and were in all respects performed by The Troy Union Railroad Company and the other railroad companies named therein and parties to such contracts to, and at the time, the assessment of 1911, here the subject of review, was made, and no right then or at any time after the contract of July 1st, 1858, was executed existed, either on the part of the City of Troy or the Legislature of the State of New York to take away or disregard the exemption of the property of The Troy Union Railroad Company in the City of Troy from assessment for the purposes of taxation provided for and agreed to in said contract- or either of them on the ground, or for the reason, such contracts had not been performed.

Refused. A. C.

15. Chapter 201 of the Laws of 1909 of the State of New York, entitled "An Act to repeal Chapter 462 of the Laws of 1853, entitled 'An Act providing for the taxation of the property of the
499 Union Railroad Company in Troy,' passed June 24, 1853," was and is unconstitutional, illegal and void, in that it was and is an impairment of the obligation of a contract and was in contravention of subdivision 1 of section 10 of article I of the Constitution of the United States, which prohibits the passage by the Legislature of any State of any law impairing the obligation of contracts.

Refused. A. C.

16. The repeal of the law of 1853 by the law of 1909 was not within any power or in the exercise of any right of the Legislature of the State of New York to amend, alter or repeal laws previously enacted. No right to amend, alter or repeal Chapter 462 of the Laws of 1853, was reserved therein, nor was the right or power to amend, alter or repeal it embraced in any general power of such Legislature to amend, alter or repeal statutes previously enacted.

Refused. A. C.

17. By the contract of December 3d, 1852, between the City of Troy, The Troy Union Railroad Company and the other railroad companies named in, and parties to, such contract, by Chapter 462 of the Laws of 1853, ratifying and approving the exemption of the property of The Troy Union Railroad Company in the City of Troy to the extent provided for in such contract, and by performance of such contract by The Troy Union Railroad Company and the other railroad companies named therein and parties thereto, Chapter 462 of the Laws of 1853 became and thereafter was an irrepealable law and was so irrepealable when Chapter 201 of the Laws of 1909 was enacted.

Refused. A. C.

500 18. The stipulations and orders made and entered relative to the assessments made by the City of Troy or by the State Board of Tax Commissioners of the State of New York prior to the year 1910 do not constitute a former adjudication of the questions presented herein relative to the assessment of 1911.

Found. A. C.

19. The assessment of The Troy Union Railroad Company by the assessors of the City of Troy in and for the year 1911, which is the subject of review herein, was and is erroneous, illegal and void because its property in the City of Troy was, when such assessment was made, exempt from assessment for the purposes of taxation therein and in the County of Rensselaer to or for any amount in excess of $30,000. Such assessment should therefore be stricken from the assessment roll and the tax levied thereon cancelled and refunded or reduced to $30,000 and the tax thereon in excess of the tax on $30,000 should be refunded.

Refused. A. C.

20. The prayer of The Troy Union Railroad Company in its petition for a writ of certiorari to review the assessment complained of herein should be, and hereby is, granted, and said Company should recover from the defendants the costs and disbursements of this proceeding.

Refused. A. C.

21. It is my opinion that judgment should be granted in accordance with the foregoing findings of fact and conclusions of law.

Refused. A. C.

LEWIS E. CARR,
Attorney for Troy Union Railroad Co.

501 *Exceptions of New York Central Company.*

Supreme Court, Rensselaer County.

PEOPLE ex Rel. NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Relator,

against

G. FRANK MEALY and Others, as Assessors of the City of Troy, Defendants.

The New York Central & Hudson River Railroad Company, the above-named relator, hereby excepts to the findings of Justice Chester at Special Term in the above-entitled proceeding, as follows:

1. It excepts to the finding of fact numbered "13."
2. It excepts to the finding of fact numbered "14."
3. It excepts to so much of the finding of fact numbered "21" as follows:

"All the construction and maintenance of the railroad in the city of Troy described in the assessment herein has been at the expense of, and has been paid for by, the railroads owning stock in the Troy Union Railroad Company and their respective successors as hereinbefore found."

4. It excepts to so much of the conclusion of law numbered "1" as follows:

"But said constituent railroad companies acquired thereby a taxable freehold estate in said real property as tenants in com-
502 mon to the extent of an undivided nine-tenths (9-10) thereof."

5. It excepts to the whole of the conclusion of law numbered "2."
6. It excepts to the whole of the conclusion of law numbered "3."

The relator The New York Central & Hudson River Railroad Company above named also excepts to the refusals of the court to find as requested by it as follows:

1. It excepts to the refusal to find the Relator's requested finding of fact numbered "3."
2. It excepts to the refusal to find the Relator's requested finding of fact numbered "7" in the form requested.
3. It excepts to the refusal to find the Relator's requested finding of fact numbered "10" in the form requested.
4. It excepts to the refusal to find the Relator's requested finding of fact numbered "11" in the form requested.
5. It excepts to the refusal to find the Relator's requested finding of fact numbered "22" in the form requested.

6. It excepts to the refusal to find the Relator's requested finding of fact numbered "28" in the form requested.

7. It excepts to the refusal to find the Relator's requested finding of fact numbered "31" in the form requested.

8. It excepts to the refusal to find the Relator's requested conclusions of law numbered "1," "3," "4," "5," "6," "9," "11," "12," "14," "15," "16," "17," "19," "20" and "21."

503 9. It excepts to the refusal to find the Relator's requested conclusion of law numbered "7" to the extent such conclusion of law was refused.

10. It excepts to the refusal to find the Relator's requested conclusion of law numbered "10" to the extent such conclusion of law was refused.

VISSCHER, WHALEN & AUSTIN,
Attorneys for Relator,
The New York Central & Hudson River Railroad Company.

Dated, February 5, 1915.

To the Clerk of the County of Rensselaer and Charles I. Webster, attorney for defendants:

Take Notice: The foregoing are the exceptions taken and filed by the Relator herein to the findings of the court in the above-entitled proceeding and to the refusal of the court to find as requested by the Relator The New York Central & Hudson River Railroad Company.

VISSCHER, WHALEN & AUSTIN,
Attorneys for Relator,
The New York Central & Hudson River Railroad Company.

504 *Exceptions of Troy Union Railroad Company.*

Supreme Court, Rensselaer County.

THE PEOPLE ex Rel. TROY UNION RAILROAD COMPANY, Relator,

against

G. FRANK MEALY and Others, as Assessors of the City of Troy, Defendants.

The Troy Union Railroad Company, the above-named relator, hereby excepts to the findings of Justice Alden Chester at Special Term in the above-entitled proceeding, as follows:

1. It excepts to the finding of fact numbered 13.

2. It excepts to the finding of fact numbered 14.

3. It excepts to so much of the finding of fact numbered 21 as herein follows:

"All the construction and maintenance of the railroad in the city of Troy described in the assessment herein has been at the expense of, and has been paid for by the railroads owning stock in the Troy

Union Railroad Company and their respective successors as hereinbefore found."

4. It excepts to the conclusion of law numbered 1 to the extent that it finds:

"But said constituent railroad companies acquired thereby a taxable freehold estate in said real property as tenants in common to the extent of an undivided nine-tenths thereof."

505 5. It excepts to the whole of the conclusion of law numbered 2.

6. It excepts to the whole of the conclusion of law numbered 3.

The above-named relator also excepts to the refusals of Justice Alden Chester at Special Term to find as requested by it as follows:

1. It excepts to the refusal to find the relator's requested finding of fact numbered 3.

2. It excepts to the refusal to find the relator's requested finding of fact numbered 7 in the form requested.

3. It excepts to the refusal to find the relator's requested finding of fact numbered 10 in the form requested.

4. It excepts to the refusal to find the relator's requested finding of fact numbered 11 in the form requested.

5. It excepts to the refusal to find the relator's requested finding of fact numbered 22 in the form requested.

6. It excepts to the refusal to find the relator's requested finding of fact numbered 28 in the form requested.

7. It excepts to the refusal to find the relator's requested finding of fact numbered 31 in the form requested.

8. It excepts to the refusal to find the relator's requested conclusions of law numbered 1, 3, 4, 5, 6, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21.

9. It excepts to the refusal to find the relator's requested conclusion of law numbered 7, to the extent such conclusion of law was refused.

506 10. It excepts to the refusal to find the relator's requested conclusion of law numbered 10 to the extent such conclusion of law was refused.

LEWIS E. CARR,
Attorney for Relator, Troy Union Railroad Company.

Dated, February 4th, 1915.

To Charles I. Webster, attorney for defendants:

Take Notice: The foregoing are the exceptions taken and filed by the relator herein to the findings of the Court in the foregoing entitled proceeding and to the refusals of the Court to find as requested by the relator.

LEWIS E. CARR,
Attorney for Relator.

507 *Special Term Opinion.*

Supreme Court, Rensselaer County.

Albany Special Term, January, 1915.

THE PEOPLE ex Rel. NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Relator,

against

G. FRANK MEALEY and OTHERS, as Assessors of the City of Troy, Defendants.

THE PEOPLE ex Rel. TROY UNION RAILROAD COMPANY, Relator,

against

G. FRANK MEALEY and Others, as Assessors of the City of Troy, Defendants.

Writs of Certiorari to Review Assessments against Certain Railroad Properties within the City of Troy for the Year 1911.

Lewis E. Carr and William L. Visscher, for the relators.
Charles I. Webster, Corporation Counsel.
George B. Wellington, of counsel, for the defendants.

508 CHESTER, *J.*:

The matters under these writs have been referred to a Referee to take evidence and to report the same to the Court with his findings of fact and conclusions of law. The evidence has been taken and the report made. The proceedings have come on for determination upon the evidence so taken and the report so made. Both proceedings have been heard and are to be tried together.

The assessments brought up for review are as follows:

"Troy Union Railroad Co., Boston and Maine Railroad Co., Delaware and Hudson Railroad Co., New York Central and Hudson River — Road Co.

The lands of roadbed and adjacent thereto in the several wards of the city, with rails, superstructures, depot buildings and appurtenances, being all the railroad property in the city of Troy, located between Madison street on the south, Hoosick street on the north, and the approach of the Delaware and Hudson Company's bridge on the west, excepting that portion assessed as franchises lying in public streets.

(Valuation, $1,000,000). (Real property).
Special Franchise, 1911, $215,400."

There is substantially no dispute concerning the facts which are, however, somewhat voluminous and involve to a considerable extent

the history of all the railroads entering the city of Troy for over half a century.

It appears that prior to the year 1851, four railroads had their termini in that city, viz.: the Rensselaer and Saratoga, the Troy and Boston, the Schenectady and Troy and the Troy and Greenbush.

The three first named came down River street discharging and
509 receiving passengers at different places; the Rensselaer and Saratoga at the Troy House, the Troy and Schenectady at the foot of State street and the Troy and Boston in front of the Mansion House. The Troy and Greenbush came in from the south having its terminus at the junction of Adams and River streets. The cars of the Rensselaer and Saratoga and Troy and Schenectady stopped at Green Island and were drawn over the bridge of the Rensselaer and Saratoga and down River street to their respective termini by horses; those of the Troy and Boston were drawn down River street from Hoosick street to its terminus by horses; those of the Troy and Greenbush were brought up to its terminus by horses. There was no connection between the four roads except that the three first-named used the same tracks on River street from the Rensselaer and Saratoga Bridge south to their respective termini. This being the situation negotiations were had between the city officials and representatives of the four railroad companies which resulted in an agreement between them which bore date, December 3rd, 1852, under which the tracks of the several railroad companies were to be taken out of River street and a single railroad for the joint use of the four companies was to be built on a new line, to enter a union passenger station on Sixth avenue which new line and passenger station was to be constructed for the joint use of the four companies who could thereupon get into and through the city of Troy with their locomotives.

The legislature had by Chapter 255 of the Laws of 1851 passed an act to authorize the city of Troy and certain railroad corporations to subscribe for and become the owners of stock for the construction of a railroad through the whole or some portion of the city.

510 That law provided that the city of Troy and the several railroad corporations whose roads entered the city might subscribe for and become the owners of stock in a railroad corporation to be formed under the then general railroad law (Act of 1850) for the construction of a railroad with one or more tracks through the city. Commissioners were appointed to locate the proposed railroad, subject to the approval of the Common Council.

The act also provided that the city of Troy might borrow upon its bonds a sum not exceeding the cost of the construction of such railroad and that the city was to be indemnified against payment of the principal and interest of such bonds by a mortgage to be executed by such proposed corporation on the railroad to be constructed, its capital stock and franchises and by guarantee obligations of the several railroad corporations authorized to subscribe for stock.

Shortly after the passage of the above law, the Troy Union Railroad Co. was organized under the general railroad law of 1850 by filing its articles of association on July 21st, 1851. Its capital stock was

fixed at $30,000, its corporate existence limited to one hundred years and the length of its road was not to exceed three miles through the city of Troy.

The agreement of December 3rd, 1852, hereinbefore mentioned was made between the city of Troy, the Troy Union Railroad Co., the Rensselaer and Saratoga Railroad Co., the Schenectady and Troy Railroad Co., the Troy and Boston Railroad Co. and the Hudson River Railroad Co. which had theretofore leased the Troy and Greenbush Railroad. It is not necessary to refer to all the details of this voluminous agreement. Reference to a few of its provisions, however, are essential. By its terms it was agreed that the Troy
511 Union Railroad Co. should construct, maintain and operate a railroad in the city of Troy and that the present owners of the stock of that company except those who held stock for the purpose of making them directors, should transfer the same to the four railroad companies named, in order that each might have an equal amount of the stock. It was provided that the city of Troy should issue its bonds to enable the Troy Union Railroad Co. to build the road and passenger house and that such Troy Union Railroad Co. would execute to the city of Troy a mortgage to secure the bonds and that the four railroad companies would indemnify the city of Troy against the principal and interest of such bonds. It was also agreed that each railroad company should be permitted to use the railroad, which was to be constructed by the Troy Union Railroad Co.; that the Rensselaer and Saratoga Bridge crossing the Hudson River might be used by the different railroad companies but that the bridge was to remain the property of the Rensselaer and Saratoga Railroad Co.; that the several railroad companies should have equal rights and privileges in the track and passenger house of the Troy Union Railroad Co.; that each constituent company should be entitled to have three directors in the Troy Union Railroad Co. and that the remaining directors should be elected by unanimous vote.

It was provided in Section 21 that "the stock and property of the Troy Union Railroad Co. shall belong equally" to the Rensselaer and Saratoga, Schenectady and Troy, Hudson River and Troy and Boston companies subject to said mortgage and the payment of said bonds.

512 Section 17 is as follows:

"17. The party of the first part agrees that the Common Council of the city of Troy shall join in an application to the Legislature of the State of New York; that the Troy Union Railroad Company be exempt from taxation upon an amount exceeding the present amount of its capital stock, and that no tax shall be imposed upon the Rensselaer and Saratoga Railroad Company on account of the proposed addition to the said bridge. And if such law shall not be passed, the Common Council of the city of Troy shall refund to the Troy Union Railroad Company an amount equal to the city taxes imposed on the Troy Union Railroad Company for any valuation exceeding its present capital stock; and shall also refund to the Rensselaer and Saratoga Railroad Company an amount equal to the city taxes imposed on the Rensselaer and Saratoga Railroad Company on

account of the said bridge for any valuation exceeding the present valuation."

Thereafter the Commissioners named in the Act of 1851 (Chap. 255), located the line of the proposed new railroad which was adopted by the Troy Union Railroad Co. and by the Common Council of Troy. That company thereupon purchased the necessary lands taking the title thereto in its own name, constructed the railroad and erected the passenger house at a total cost of $707,000, all of which was obtained from the sale of the bonds of the city of Troy, which were secured by the mortgage hereinbefore mentioned.

The Legislature by Chapter 462 of the Laws of 1853, thereafter passed an act providing for the taxation of the property of the Union Railroad Co. That act provided that "for the purposes of taxation in the City of Troy, and in the County of Rensselaer, the property of the Troy Union Railroad Company shall be estimated and assessed (as the common council of said city of Troy, by its contract with said Company, dated December third, eighteen hundred and fifty-two, agreed that the same should be) at the amount of the capital stock of said company, and no more."

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It appears that thereafter these four railroad companies or some of them made default in paying interest upon the bonds and that in 1857, the City of Troy commenced an action to foreclose its mortgage and enforce the indemnity agreements of the four companies. To that action the Troy Union Railroad Co. and the four other railroad companies were parties. The action was settled by a new agreement which bears date July 1st, 1858, and which took the place of the contract of December 3d, 1852. It was recited in the preamble to such new agreement that "the parties hereto, for the purpose of settling the matters involved in said suit and for the purpose of reforming the contract entered into by or on behalf of the above-named parties bearing date the 3d day of December, 1852, adopted this instead of and in place of the said contract which is hereby annulled."

The parties to the new agreement were the City of Troy, the Troy Union Railroad Co., the Rensselaer and Saratoga Railroad Co., the New York Central Railroad Co., which in the mean time had leased the Schenectady and Troy Railroad, the Hudson River Railroad Co. and the Troy and Boston Railroad Co.

In the new or reformed contract it was provided that the Troy Union Railroad Co. might continue to operate its railroad in the city of Troy as now located and constructed; that such company should raise by monthly assessments all sums necessary to pay its expenses of every kind; that the four constituent railroad companies should each pay to the Troy Union Railroad Co. monthly, one-quarter part of the assessment; that if any of them should make default in payment of the assessment it might be excluded from the use of the tracks of the Troy Union Railroad Co., its passenger house and other property until payment; and that each of the four constituent companies should own one-fourth of the stock of the Troy Union Railroad Co. and have equal rights and privileges

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in the track, passenger house and other property of the Troy Union Railroad Co.

Section 7 of this reformed contract is as follows:

"The New York Central Railroad Company and the Hudson River Railroad Company shall each own one-fourth part, and the Rensselaer & Saratoga Railroad Company and the Troy & Boston Railroad Company shall each own one-fifth part of the railroad, passenger house and all other property, rights and franchises of the Troy Union Railroad Company subject to the lien of the mortgage thereon to the City of Troy."

Section 11 of said reformed contract is as follows:

"The party of the first part (city of Troy) agree that if the law passed by the legislature of the State of New York June 24, 1853, relative to the taxation of the property of the Troy Union Railroad Company in Troy shall at any time, be repealed, the Common Council of the City of Troy shall join in an application to the legislature of the State of New York, that the Troy Union Railroad Company be exempt from taxation upon an amount exceeding the present amount of its capital stock; and that no tax be imposed upon
515 the Rensselaer and Saratoga Railroad Company on account of the proposed addition to the said bridge, and if such law shall not be passed, the Common Council of the City of Troy, shall refund to the Troy Union Railroad Company, an amount equal to the city taxes imposed upon the Troy Union Railroad Company for any valuation exceeding its present capital stock, and shall also refund to the Rensselaer & Saratoga Railroad Company an amount equal to the city taxes imposed on the Rensselaer and Saratoga Railroad Company on account of the said bridge, for any valuation exceeding the present valuation."

It is not necessary to refer to the other provisions of the new contract. It has been in force ever since. No formal deed of conveyance was ever executed by the Troy Union Railroad Co. conveying the railroad, the passenger station or other property to the four other companies or either one of them. The bonds secured by the mortgage referred to have all been paid and the mortgage was discharged of record July 26th, 1901.

Subsequent to July 1st, 1858, the New York Central Railroad Co. and the Hudson River Railroad Co. were consolidated and became the New York Central and Hudson River Railroad Co.; the Troy and Boston Railroad Co. was consolidated with the Fitchburg Railroad Co. and the consolidated railroad was leased to the Boston and Maine Railroad. In 1871 the Rensselaer and Saratoga Railroad was leased to the Delaware and Hudson Company.

The Troy Union Railroad Co. still maintains its corporate existence and its capital stock still remains at the sum of $30,000. It elects its Board of Directors annually and has since its organ-
516 ization maintained the road and passenger house or station, keeping them in proper repair and has rebuilt the station three times. It keeps the station property insured in its own name, employs flagmen and gatemen in different parts of the city, has erected signal towers and employs signalmen for operating them.

It rents parts of the station property not required for the commo business of the several companies using the same, but it does no operate and never has operated any trains; it owns no locomotive passenger cars, freight cars or baggage cars; it carries no passenger and conducts no transportation business; the men employed to tak care of the tracks and the flagmen and gatemen at crossings are paid by the several other railroads using the tracks, in proportion to thei stock ownership. The ticket agents who sell tickets for the severa roads interested make direct returns to their respective companie and the Troy Union Railroad gets none of the receipts from such sales. The Troy Union Railroad Co. pays no dividends, its receipt and disbursements being equal each year, its disbursements being provided for by a pro rata assessment made upon the railroad com panies now owning its stock. When the passenger house or statio was last rebuilt it was paid for by the three railroad companies own ing its stock. The New York Central and the Hudson River Rail road Company having been consolidated, the New York Central and Hudson River Railroad Company paid one-half of such expenses, the Boston and Maine Railroad Company paid one-quarter and the Delaware and Hudson Company paid one-quarter.

From 1858 to 1886 the Troy Union Railroad Company was as sessed by the city of Troy at $30,000, the amount of its
517 capital stock and no more. In 1886 and 1887 the assessor of the city of Troy assessed the Troy Union Railroad Co. for its railroad, passenger station and other real estate, $783,984 in each year. Those assessments were reviewed upon writs of certiorari, and it was held that the act of the legislature, Chapter 462 of the Laws of 1853, was valid and that the assessments were erroneous. (People ex rel. Troy Union vs. Carter and Ors., 52 Hun 458, aff'd 117 N. Y. 625.) Thereafter the city of Troy continued the assessment at $30,000 through the year 1906. In 1907 and 1908 and 1909, assessments for the property in question were made against all four railroad companies including the Troy Union Company, at a higher amount. Proceedings were taken to review these assessments as well as those made by the State Board of Tax Commissioners upon assessments under the special franchise tax law, but these proceedings never came to an adjudication they having been argued before the late Justice George H. Fitts, who died without reaching a decision upon them. In 1909 a settlement of all the proceedings then pending was made on the basis of paying the taxes levied on the assessments of 1907, 1908 and 1909 and cancelling the special franchise assessments which had been made from 1901 to 1909.

In 1909 by Chapter 201 of the laws of that year, the legislature passed an act repealing Chapter 462 of the laws of 1853, which was the act providing for the taxation of the property of the Union Railroad Company.

The claim is made on the part of the relators here that this repealing act is unconstitutional because its effect was the impairment of a contract and therefore that it was in contravention of subdivision 1 of section 10 of Article I of the Constitution of the

518 United States, which prohibits the passage by any State of any act impairing the obligation of a contract. It is also claimed by the relators that the assessment in question is invalid because it is not made against the Troy Union Railroad Co. alone, which the relators claim is the owner of the real property taxed.

The referee has found that the repealing act is constitutional and valid and that the contract of July 1st, 1858, was not in legal effect a deed or instrument conveying the title of the Troy Union Railroad Company and its property in question to the relators or any of the several other railroad companies. He reported in favor of dismissing the petitions and quashing the writ with costs.

The position of the relators with respect to the constitutional question involved seems to be that by reason of the contract of December 3d, 1852, the city of Troy obtained substantial benefits from the several railroad companies by eliminating their use of River street for their roads any by procuring a single road and a single passenger house for the common use of all and that the State by passing the act, Chapter 462 of the laws of 1853, authorizing an assessment of the property of the Troy Union Railroad Company at an amount equal to its capital stock of $30,000, and no more, became a party to that contract and being a party it was without power under the Federal constitution to pass the repealing act, Chapter 201 of the Laws of 1909.

It is conceded that the city of Troy had no power to make an effective agreement exempting property from taxation. In the contract of 1852 that principle was recognized and the city did not assume to so agree, but it did agree to join in an application to the legislature for the passage of a law which would permit such 519 exemption. The city kept its agreement in that respect and joined with the others interested and procured the passage of the law. Before it was passed, however, the Troy Union Railroad Company had been fully organized under the General Law, and its capital had been furnished. The Troy Union Railroad Company was not required by the act to give anything or to do anything for the State as a consideration for the exemption. It appears very clearly that the act was wholly voluntary and based upon no consideration whatever passing to the State. Neither was the State, in form, a party to the contract. It does not appear to me that by the mere passage of the act of exemption made at *at* the request of the parties to the contract the State made itself a party thereto. It merely yielded its assent to make legal that which the parties themselves could not legally accomplish, that is the exemption of very considerable amounts of property from taxation. It the State was not a party to the contract it follows as a matter of course that the act authorizing the exemption cannot be deemed to create a contract between the State and the Troy Union Railroad Company. If that is the correct view of the law, the act creating the exemption could be repealed at any time.

It appears that the contract of December 3d, 1852, was expressly annulled and replaced by the later contract of July 1st, 1858, between the city of Troy, the Troy Union Railroad Company and the other

railroad companies. In this later contract it was expressly recog-
nized by the parties that the legislature might repeal the exemption
passed because it is there stated that if that law should "at any time
be repealed" the Common Council would join in an applica-
520 tion to the legislature for another act of exemption from taxa-
tion upon an amount exceeding the present amount of its cap-
ital stock and that if such law should not be passed, the Common
Council would refund to the company an amount equal to taxes
imposed for any valuation exceeding its present capital stock. That
agreement to apply again to the legislature for renewal of the ex-
emption was decided to be illegal and ultra vires by the trial court
in People ex rel. Troy Union Railroad Company vs. Carter (supra),
although this principle is not referred to in the published report of
the decision on appeal, but it is contained in the findings of the
court, contained in the printed case on appeal which forms a part
of the record now before the court.

If by any sort of reasoning it can be claimed that the exemption
statute of 1853 was a part of the original charter of the Troy Union
Railroad Company, the right to repeal it is saved by the provision
of Article 8, Section 1 of the New York State Constitution of 1846
which provided that all general laws and special acts creating corpo-
rations passed pursuant to that section of the Constitution may be
altered from time to time or repealed.

But as I view it, the exemption statute cannot fairly be regarded
as a part of the original charter for the reason that the Troy Union
Railroad Company was chartered under the General Law. The
State by the repealing act has not assumed to change or alter any
provision of the charter of the Troy Union Railroad Company. It
merely repealed the act granting the exemption and if as I think
it was not a party to the contract between the city and the railway
companies and its act in granting the exemption was simply
521 a gratuitous or voluntary one made at the request of the par-
ties there is no constitutional prohibition of its right to repeal
the act. This view, I think, is amply sustained by the authorities.

In Tucker vs. Ferguson, 89 U. S. (22 Wall.) 527, it was held that
an act of the legislature exempting the property of a railroad from
taxation is not a "contract" to exempt it unless there be a considera-
tion for the act; that an agreement where there is no consideration
is void; that it was the promise of a gratuity spontaneously made
which may be kept, changed or recalled at pleasure and that this
rule of law applies to the agreements of States made without consid-
eration as well as to those made by individuals.

In West Wisconsin Railroad Co. vs. Supervisors, 93 U. S. (3 Otto)
593, the legislature of Wisconsin passed an act providing that all
the lands of the railroad company should be exempt from taxation
for ten years. Later the exemption from taxation was extended for
a period of ten years. Thereafter the legislature enacted that certain
lands of the company should be liable to taxation, the same as other
real estate. After the levying of a tax, its validity was questioned
by the railroad and the court held following the principle of the
Tucker case above cited that the exemptions in question were grat-

ities offered by the State without any element of a contract and that there was no assurance or intimation that they were intended to be irrevocable or that the laws in question should not be at all times subject to modification or repeal in like manner as other legislation. The validity of the tax was therefore upheld.

In Rector of Christ Church vs. County of Phila., 65 U. S.
522 (24 How.) 300, the legislature of Pennsylvania had passed an act declaring "that the real property, including ground rents now belonging to Christ Church Hospital in the City of Philadelphia, so long as the same shall continue to belong to the said hospital, shall be and remain free from taxes." Later the legislature passed a law which subjected the ground rents to taxation. The Supreme Court of Pennsylvania sustained the validity of the latter act. The case was then taken by writ of error to the United States Supreme Court where it was insisted that the act of exemption was a contract in perpetuity and was protected by the contract clause of the Federal Constitution, but that court unanimously affirmed the judgment of the Supreme Court of the State and held that the exemption was contained in an act which required the imposition of no service or duty or other remunerative condition on the corporation; that it was simply in the nature of a privilege and that the act creating the exemption might be revoked at the pleasure of the sovereign.

The case last cited was followed in People ex rel. Davies vs. Commissioners of Taxes, 47 N. Y. 501, where it was held that the provisions of Chapter 257 of the Laws of 1822, which enacted that no property of the Society of the New York Hospital should be subject to be taxed by virtue of any law of this State, did not constitute a contract, but was a spontaneous concession of the legislature not connected with any service or duty imposed upon the corporation and that it was therefore subject to modification or repeal.

I am unable to agree with the contention of the defendants that by reason of the contracts of 1852 and 1858 the title to the property against which the assessment in question has been made,
523 has passed from the Troy Union Railroad Company to the several other railroad companies who own its stock. It appears that the title to the real estate which was procured for the building of the road was taken in the name of the Troy Union Railroad Company; its passenger house or station has been and is insured in its name; it has done many acts by way of making leases and otherwise inconsistent with the idea that the other railways own the fee of the property in question. The claim that the title has passed to the other railways is based largely upon statements made in the two contracts; for instance in the contract of 1852 it is stated that "the stock and property of the Troy Union Railroad Company shall belong equally" to the several other railroads subject to the mortgage, and in the new contract of 1858, it is provided the New York Central and Hudson River companies "shall each own one-fourth part" and the Rensselaer and Saratoga and Troy and Boston companies "shall each own one-fifth part" of the railroad, passenger house and all other property, rights and franchises of the Troy Union

Railroad Company, subject to the lien of the mortgage thereon to the city of Troy. Neither of these contracts was in the form of a deed of conveyance and the property was not described except in the general way, and they are not in my judgment sufficient to pass the fee. I think, however, that they are sufficient to pass a taxable interest in the real estate. It is unimportant to determine just what that interest is, whether it is a lease in perpetuity of the freehold or whether it is a qualified fee or otherwise. Whatever it is, it is a freehold estate. It is clear that the entire beneficial use and enjoyment in this real estate is in the relators and the other
524 railroads concerned and that such beneficial use and enjoyment is an interest in realty and an interest which is subject to taxation.

The Tax Law, Chapter 62, Laws of 1909, in subdivision 3 of Section 2, defines *that* terms "land," "real estate" and "real property," in language broad enough to include the property in question and Section 3 of the tax law provides that "all real property within the State * * * is taxable unless exempt from taxation by law." The right given by the Troy Union Railroad Company to these railway companies to use the property in question perpetually, is an estate in lands and being so it is an estate that is taxable without regard to the question as to where the technical legal title in fee simple absolute may be.

The Troy Union Railroad Company is a railroad corporation in name only and the constituent companies are occupying and using without any restrictions whatever the property in question under what may fairly be regarded as a perpetual lease thereof, if not an estate of a higher character. That being so I am inclined to the view of the counsel for the defendants that the form of the assessment in this case must be sustained because if the Troy Union Railroad Company is the sole owner and has the sole taxable title to the properties in question, it does not invalidate the assessment against it by adding the names of others as owners so long as the identity of the property is established. The assessment is aimed to reach the real estate and is in rem and not in personam. The assessment in the form it is made in this case would appear to be saved by the provision of the charter of the city of Troy that "no assessment hereafter
525 made in said city shall be held to be invalid because the same may be made out in terms against * * * a company * * * in whom is the record, though not the actual title of the property, or for any cause arising through ignorance or mistake as to the name of the owner or owners of the property assessed, whether an individual or a corporation, provided that such property is sufficiently described on the assessment rolls to identify and indicate the particular property which it was intended to assess." (Sec. 1, Title VII, Chap. 670, Laws 1892).

Then there is a provision in Section 9 of the Tax Law as amended by Chapter 315, Laws 1911, that "real property shall be assessed in the tax district in which it is situated. In all cases the assessment shall be deemed as against the real property itself and the property itself shall be holden and liable to sale for any tax levied upon it."

I agree therefore with all the conclusions of the learned Referee and will adopt his findings, his refusals to find and his report, that the petitions in each case should be dismissed and the writs of certiorari quashed with costs.

526 *Judgments—N. Y. Central Case.*

At a Special Term of the Supreme Court Held in and for the County of Albany, at the Chambers of Hon. Alden Chester, Justice, on the Third Day of March, 1915.

Present: Hon. Alden Chester, Justice.

THE PEOPLE ex Rel. NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY

against

G. FRANK MEALEY and Others, as Assessors of the City of Troy, and Another.

On reading and filing the petition in the above-entitled matter and the writ of certiorari issued to review the assessment for the purposes of taxation in the city of Troy for the year 1911 against certain railroad properties, and the defendants' return thereto, and all the subsequent proceedings, including the report of Joseph A. Lawson, Esq., Referee, and the testimony taken before said referee, and the decision of the Special Term in said matter dated January 27, 1915; the defendants' costs having been taxed at $98.94; it is now, on motion of Charles I. Webster, defendants' attorney,

Ordered, adjudged and decreed that the petition in the above-entitled proceeding be dismissed and said writ of certiorari be quashed, and that the defendants G. Frank Mealey, George Spence, Jr., George B. Walker and Silas Downs, Jr., as Assessors of the city of
527 Troy, and Hiram W. Gordinier as Comptroller of the city of Troy, recover of New York Central and Hudson River Railroad Company, the relator, the sum of $98.94 and that execution issue therefor.

Enter in Rensselaer County.

ALDEN CHESTER,
Justice Supreme Court.

Judgment—Troy Union Case.

At a Special Term of the Supreme Court Held in and for the County of Albany, at the Chamber of Hon. Alden Chester, Justice, on the Third Day of March, 1915.

Present: Hon. Alden Chester, Justice.

THE PEOPLE ex Rel. TROY UNION RAILROAD COMPANY

against

G. FRANK MEALEY and Others, as Assessors of the City of Troy, and Another.

On reading and filing the petition in the above-entitled matter and the writ of certiorari issued to review the assessment for the purposes of taxation in the city of Troy for the year 1911 against certain railroad properties, and the defendants' return thereto, and all the subsequent proceedings, including the report of Joseph A. Lawson, Esq., Referee, and the testimony taken before said Referee, and the decision of the Special Term in said matter dated January 27, 1915; the defendants' costs having been taxed at $2,719.84; it is now, on motion of Charles I. Webster, defendants' attorney,

528

Ordered, adjudged and decreed that the petition in the above-entitled proceeding be dismissed and said writ of certiorari be quashed and that the defendants G. Frank Mealey, George Spence, Jr., George B. Walker and Silas Downs, Jr., as Assessors of the city of Troy, and Hiram W. Gordinier as Comptroller of the city of Troy, recover of Troy Union Railroad Company, the relator, the sum of $2,719.84 and that execution issue therefor.

ALDEN CHESTER,
Justice Supreme Court.

529 *Notice of Appeal.*

Supreme Court, Rensselaer County.

THE PEOPLE OF THE STATE OF NEW YORK ex Rel. THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Relator,

against

G. FRANK MEALEY, GEORGE SPENCE, JR., GEORGE B. WALKER, and Silas Downs, Jr., General Assessors of the City of Troy, Constituting the Board of Assessors of said City, and Hiram B. Gordinier, Comptroller of the City of Troy, N. Y., Respondents.

GENTLEMEN: Please take notice that the relator in the above-entitled proceeding hereby appeals to the Appellate Division of the

Supreme Court, Third Judicial Department, from the judgment, decision and decree of the Supreme Court herein entered in the Clerk's office of the County of Rensselaer on the 12th day of March, 1915, dismissing the petition of the relator in said proceeding and quashing the writ of certiorari and ordering, adjudging and decreeing that the respondents recover of the relator ninety-eight dollars ninety-four cents ($98.94) costs awarded by the said judgment, decision
530 and decree and from the whole and each and every part thereof.

VISSCHER, WHALEN & AUSTIN,
Attorneys for Relator-Appellant.

Office and Post Office Address, 19 Tweddle Building, Albany, N. Y.

Dated, Albany, N. Y., March 19th, 1915.

To the Clerk of the County of Rensselaer and Charles I. Webster, Corporation Counsel, Attorney for Respondents, Office and Post Office Address, Troy, N. Y.

Filed and Served, March 20th, 1915.

Notice of Appeal.

Supreme Court, Rensselaer County.

THE PEOPLE OF THE STATE OF NEW YORK ex Rel. TROY UNION RAILROAD COMPANY, Relator,

against

G. FRANK MEALEY, GEORGE SPENCE, JR., GEORGE B. WALKER, and Silas Downs, Jr., General Assessors of the City of Troy, Constituting the Board of Assessors of said City, and Hiram B. Gordinier, Comptroller of the City of Troy, N. Y., Respondents.

GENTLEMEN: Please take notice that the Troy Union Rail-
531 road Company, the relator in the above-entitled proceeding, hereby appeals to the Appellate Division of the Supreme Court of the State of New York, Third Judicial Department, from the final order and judgment of the Special Term of the Supreme Court herein, entered in the office of the clerk of the County of Rensselaer, March 12th, 1915, which dismissed the petition of the relator herein and quashed the writ of certiorari granted thereon and ordered, decreed and adjudged that the respondents in this proceeding recover from the relator $2,719.84 costs and disbursements herein, and from the whole and each and every part of said final order and judgment.

LEWIS E. CARR,
Attorney for Relator, Albany, N. Y.

Dated, March 23rd, 1915.

To the Clerk of the County of Rensselaer and Charles I. Webster, Corporation Counsel, Attorney for Respondents, Troy, N. Y.

Filed and served, March 24th, 1915.

532 *Stipulation.*

Supreme Court, Rensselaer County.

THE PEOPLE STATE OF NEW YORK ex Rel. TROY UNION RAILROAD COMPANY and New York Central & Hudson River Railroad Company, Relators,

against

G. FRANK MEALY and Others, Defendants.

It is hereby stipulated between the parties to the above-entitled action that the foregoing case contains all the evidence taken on the trial of the action, together with the exceptions of the parties, proceedings before the referee, judgment roll, requests to find, exceptions and notice of appeal and that the same are true copies of the originals thereof; that the originals thereof are now on file in the office of the Clerk of the County of Rensselaer, and certification thereof is hereby waived.

Dated, January 15th, 1916.

LEWIS E. CARR,
Attorney for Relator Troy Union Rd. Co.
VISSCHER, WHALEN & AUSTIN,
Attorneys for Relator N. Y. C. & H. R. R. Co.
CHARLES I. WEBSTER,
Corporation Counsel, Attorney for Defendants.

533 Supreme Court, Rensselaer County.

THE PEOPLE STATE OF NEW YORK ex Rel. TROY UNION RAILROAD COMPANY and New York Central and Hudson River Railroad Company, Relators,

against

G. FRANK MEALEY and Others, Defendants.

The foregoing case contains all the evidence given before the referee and upon the hearing at Special Term and so much of the exhibits as is material and upon the stipulation of the parties thereto, I hereby order that the same as herein contained in the printed record be filed in the office of the Clerk of Rensselaer County.

Dated, January 15, 1916.

ALDEN CHESTER,
Justice Supreme Court.

534 *Order of Affirmance.*

At a Term of the Appellate Division of the Supreme Court, Third Department, Held at the County Court-house, in the City of Albany, Albany County, N. Y., Commencing on the First Day of May, 1917.

Present: Hon. John M. Kellogg, Presiding Justice. Hon. George F. Lyon, Hon. John Woodward, Hon. Aaron V. S. Cochrane, Hon. Albert H. Sewell, Associate Justices.

THE PEOPLE ex Rel. TROY UNION RAILROAD COMPANY, Appellant,

against

G. FRANK MEALEY and Others, Assessors of the City of Troy, and Another, Respondents.

The appeal in the above-entitled matter having been brought on for argument at said term of the Appellate Division of the Supreme Court, Third Department, Lewis E. Carr, Esq., appearing for the appellant and G. B. Wellington, Esq., appearing for the respondents, and due deliberation had, it is

Ordered, that the final order and judgment in said proceeding entered in Rensselaer County Clerk's office March 12, 1915, dis-
535 missing the relator's petition and quashing the writ of certiorari herein with costs, be and the same hereby is unanimously affirmed with costs.

[L. S.] JOSEPH H. HOLLANDS, *Clerk.*

Order and Judgment of Affirmance.

Supreme Court, Rensselaer County.

THE PEOPLE ex Rel. TROY UNION RAILROAD COMPANY, Appellant,

against

G. FRANK MEALEY and Others, Assessors of the City of Troy, and Another, Respondents.

An appeal having been taken to the Appellate Division of the Supreme Court by the relator from the final order and judgment in the above-entitled proceeding entered in Rensselaer County Clerk's office March 12th, 1915, and dismissing the relator's petition and quashing the writ of certiorari herein with costs, the appeal having come on for argument at a term of the court commencing May 1, 1917, Lewis E. Carr, Esq., appearing for the appellant and G. B. Wellington, Esq., appearing for the respondents, and after due deliberation had, said court having by its order heretofore entered in the Rensselaer County Clerk's office unanimously affirmed said

order and judgment appealed from with costs and the
536 respondents' costs having been taxed at one hundred and twenty-four and 75-100 dollars ($124.75),

Now, on motion of Thomas H. Guy, respondents' attorney,

It is ordered and adjudged, that said judgment and order appealed from be and the same hereby is unanimously affirmed and that the respondents recover of the relator, the appellant, the sum of one hundred and twenty-four and 75-100 dollars ($124.75).

HANS DAHL, *Clerk.*

537 *Order of Affirmance.*

At a Term of the Appellate Division of the Supreme Court, Third Department, Held at the County Court-house, in the City of Albany, Albany County, N. Y., Commencing on the First Day of May, 1917.

Present: Hon. John M. Kellogg, Presiding Justice; Hon. George F. Lyon, Hon. John Woodward, Hon. Aaron V. S. Cochrane, Hon. Albert H. Sewell, Associate Justices.

THE PEOPLE ex Rel. NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Appellant,

against

G. FRANK MEALEY and Others, Assessors of the City of Troy, and Another, Respondents.

The appeal in the above-entitled matter having been brought on for argument at said term of the Appellate Division of the Supreme Court, Third Department, Lewis E. Carr, Esq., appearing for the appellant, and G. B. Wellington, Esq., appearing for the respondents, and due deliberation had, it is

Ordered, that the final order and judgment in said proceed-
538 ing entered in Rensselaer County Clerk's office March 12, 1915, dismissing the relator's petition and quashing the writ of certiorari herein with costs, be and the same hereby is unanimously affirmed.

[L. S.] JOSEPH H. HOLLANDS, *Clerk.*

Order and Judgment of Affirmance.

Supreme Court, Rensselaer County.

THE PEOPLE ex Rel. NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Appellant,

against

G. FRANK MEALEY and Others, Assessors of the City of Troy, and Another, Respondents.

An appeal having been taken to the Appellate Division of the Supreme Court by the relator from the final order and judgment in the above-entitled proceeding entered in the Rensselaer County Clerk's office March 12th, 1915, and dismissing the relator's petition and quashing the writ of certiorari herein with costs, the appeal having come on for argument at a term of the court commencing May 1, 1917, Lewis E. Carr, Esq., appearing for the appellant, and G. B. Wellington, Esq., appearing for the respondents, and after due deliberation had, said court having by its order heretofore en-
539 tered in the Resselaer County Clerk's office unanimously affirmed said order and judgment appealed from.

Now, on motion of Thomas H. Guy, respondents' attorney,

It is ordered and adjudged, that said order and judgment appealed from be and the same hereby is unanimously affirmed.

HANS DAHL, *Clerk.*

Notice of Appeal.

Supreme Court.

THE PEOPLE ex Rel. THE TROY UNION RAILROAD COMPANY, Relator-Appellant,

against

G. FRANK MEALEY, GEORGE SPENCE, JR., GEORGE B. WALKER, and SILAS DOWNS, JR., as Assessors of the City of Troy, and Hiram W. Gordinier, as Comptroller of the City of Troy, New York, Defendants-Respondents.

Take Notice: The Troy Union Railroad Company, the above-named relator, hereby appeals to the Court of Appeals of the State of New York from the order and judgment of the Appellate Division of the Third Judicial Department, affirming with costs the judgment of the Special Term herein entered in the Rensse-
540 laer County Clerk's office March 12th, 1915, dismissing the relator's petition and quashing the certiorari herein, with

costs, which judgment and order of the Appellate Division were entered in the Rensselaer County Clerk's office August 6th, 1917.

Dated October 1st, 1917.

LEWIS E. CARR,
Attorney for Relator.

To Thomas H. Guy, Attorney for Defendants, and Hans Dahl, Clerk of Rensselaer County.

Filed and served October 3d, 1917.

541 *Notice of Appeal.*

Supreme Court.

THE PEOPLE ex Rel. THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Relator-Appellant,

against

G. FRANK MEALEY, GEORGE SPENCE, JR., GEORGE B. WALKER, and SILAS DOWNS, JR., as Assessors of the City of Troy, and Hiram W. Gordinier, as Comptroller of the City of Troy, New York, Defendants-Respondents.

Take Notice: The New York Central and Hudson River Railroad Company, the above-named relator, hereby appeals to the Court of Appeals of the State of New York from the order and judgment of the Appellate Division of the Third Judicial Department, affirming with costs the judgment of the Special Term herein, entered in the Rensselaer County Clerk's office March 12th, 1915, dismissing the relator's petition and quashing the certiorari herein, with costs, which order and judgment of the Appellate Division were entered in the Rensselaer County Clerk's office August 6th, 1917.

Dated, October 3d, 1917.

VISSCHER, WHALEN & AUSTIN,
Attorneys for Relator.

To Thomas H. Guy, Attorney for Defendants, and Hans Dahl, County Clerk of Rensselaer County.

Filed and served October 3d, 1917.

542 *Stipulation.*

Supreme Court.

THE PEOPLE ex Rel. TROY UNION RAILROAD COMPANY, Appellant,

against

G. FRANK MEALEY and Others, as Assessors, Respondents.

THE PEOPLE ex Rel. THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Appellant,

against

G. FRANK MEALEY and Others, as Assessors, Respondents.

It is hereby stipulated and agreed that the filing and serving of undertakings to perfect the above-entitled appeals to the Court of Appeals be and hereby is waived.

Dated, October 3d, 1917.

LEWIS E. CARR,
Attorney for Troy Union Railroad Company, Appellant.

VISSCHER, WHALEN & AUSTIN,
Attorneys for New York Central and Hudson River Railroad Company, Appellant.

THOMAS H. GUY,
Attorney for Respondents.

543 *Order Granting Leave to Appeal to Court of Appeals.*

At a Stated Term of the Appellate Division of the Supreme Court of the State of New York Held in and for the Third Judicial Department, at the City Hall, in the City of Saratoga Springs, on the 11th Day of September, 1917.

Present: Hon. John M. Kellogg, Presiding Justice; Hon. George F. Lyon, Hon. John Woodward, Hon. Albert H. Sewell, Hon. Aaron V. S. Cochrane, Associate Justices.

Supreme Court.

THE PEOPLE ex Rel. THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Appellant,

against

G. FRANK MEALEY and Others, Constituting the Board of Assessors of the City of Troy, Respondents.

THE PEOPLE ex Rel. THE TROY UNION RAILROAD COMPANY, Appellant,

against

THE SAME RESPONDENTS.

A motion having been made in this court by and in behalf of the appellants above named for leave to appeal to the Court of
544 Appeals of the State of New York from the judgments and orders of this court unanimously affirming the judgments of the Special Term dismissing the writs of certiorari herein and confirming the asses-ment brought before the court for review:

On reading and filing the affidavit of Lewis E. Carr, attorney and counsel for the appellants, with the notice of motion herein; it appearing therefrom and from the printed record on appeal that questions of such importance are presented in these cases they should be heard and determined by the Court of Appeals of the State of New York;

It is hereby ordered that leave to appeal from the judgments and orders herein mentioned and referred to, to the Court of Appeals of the State of New York, be, and the same is hereby granted.

[SEAL.] JOSEPH H. HOLLANDS, *Clerk.*

A copy,
JOSEPH H. HOLLANDS, *Clerk.*

545 *Affidavit No Opinion.*

Supreme Court.

THE PEOPLE ex Rel. THE TROY UNION RAILROAD COMPANY, Appellant,

against

G. FRANK MEALEY and Others, as Assessors, Respondents.

THE PEOPLE ex Rel. THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Appellant,

against

G. FRANK MEALEY and Others, as Assessors, Respondents.

STATE OF NEW YORK,
County of Albany, ss:

Lewis E. Carr, being duly sworn, says he was counsel for the above-named appellants in the above-entitled appeals in the Appellate Division, and that no opinion was filed by that court upon its decision of said appeals.

LEWIS E. CARR.

Subscribed and sworn to before me December 24th, 1917.
JOHN E. MACLEAN,
Notary Public.

546 *Stipulation Waiving Certification.*

Supreme Court.

THE PEOPLE ex Rel. TROY UNION RAILROAD COMPANY, Appellant,

against

G. FRANK MEALEY and Others, as Assessors, Respondents.

THE PEOPLE ex Rel. NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Appellant,

against

G. FRANK MEALEY and Others, as Assessors, Respondents.

It is hereby stipulated that the foregoing are true copies of the case and exceptions, judgment roll, notice of appeal to the Appellate Division of the Supreme Court, Third Judicial Department, and the record used on said appeal as contained in the original return stipulated by the respective attorneys herein and settled by the Special

Term justice, and of the order of said Appellate Division filed in the office of the Clerk of Rensselaer County, the judgment entered in said clerk's office thereon, affirming the judgment appealed from, the notice of appeal to the Court of Appeals from said order and judgment, waiver of undertakings to perfect such appeals, and order of the Appellate Division of the Third Judicial Department
547 granting leave to appeal to said Court of Appeals from such order and judgment of said Appellate Division, and of the whole of said originals now on file in said clerk's office.

And it is further stipulated that certification of said papers by the clerk of Rensselaer County is hereby waived.

Dated, December 28th, 1917.

LEWIS E. CARR,
Attorney for Troy Union Railroad Company, Appellant.
VISSCHER, WHALEN & AUSTIN,
Attorneys for New York Central and Hudson River Railroad Company, Appellant.
THOMAS H. GUY,
Attorney for Respondents.

548 At a Special Term of the Supreme Court Held at the Chambers of Hon. Wesley O. Howard, Justice of the Supreme Court, at the Court House, in the City of Troy, N. Y., on the 3rd Day of August, 1918.

Present: Hon. Wesley O. Howard, Justice.

Supreme Court.

PEOPLE ex Rel. TROY UNION RAILROAD COMPANY

against

G. FRANK MEALEY and Others, as Assessors, and Another.

The Supreme Court, by a final order entered in Rensselaer County Clerk's office March 12, 1915, having dismissed the petition of the relator and quashed the writ of certiorari herein with $2,719.84 costs; and the Appellate Division of the Supreme Court, Third Department, having affirmed said order with costs, which order was entered August 6, 1917, in Rensselaer County Clerk's office; and the relator having appealed therefrom to the Court of Appeals, and the Court of Appeals having by its remittitur ordered that the order appealed from be affirmed with costs;

Now, on reading and filing said remittitur and the return on appeal to the Court of Appeals in said case, and on motion of Thomas H. Guy, defendants' attorney and Corporation Counsel of the City of Troy, it is

Ordered, that The order of the Court of Appeals be and the same hereby is made the order of this Court.

W. O. HOWARD,
Justice Supreme Court.

549 Supreme Court.

PEOPLE ex Rel. TROY UNION RAILROAD COMPANY

against

G. FRANK MEALEY and Others, as Assessors, and Another.

The Supreme Court, by a final order entered in Rensselaer County Clerk's Office March 12, 1915, having dismissed the petition of the relator and quashed the writ of certiorari herein with $2719.84 costs; and the Appellate Division of the Supreme Court, Third Department, having affirmed said order with costs, which order was entered August 6, 1917, in Rensselaer County Clerk's Office; and the relator having appealed therefrom to the Court of Appeals, and the Court of Appeals having by its remittitur ordered that the order appealed from be affirmed with costs;

Said remittitur having been filed in the Rensselaer County Clerk's Office and the order of the Court of Appeals having been made the order of the Supreme Court by an order of the Special Term, dated August 3rd, 1918, and the defendants' costs having been taxed at $203.20, it is now on motion of Thomas H. Guy, defendants' attorney,

Ordered, that said order of the Appellate Division appealed from be and the same hereby is affirmed and that the defendants recover of the relator the sum of Two hundred and three and 20/100 Dollars ($203.20).

HANS DAHL, *Clerk.*

550 STATE OF NEW YORK,
County of Rensselaer, ss:

I, Hans Dahl, Clerk of the County of Rensselaer, and of the Supreme Court therein, the same being a court of record, do here' y certify that I have compared the foregoing return on appeal, remittitur from the Court of Appeals, and order of the Supreme Court, making the judgment of the Court of Appeals the judgment of the Supreme Court, with the originals being and remaining on file in my office, and that the same are true and correct transcripts of said originals and of the whole thereof.

In witness whereof, I have hereunto set my hand and official seal at the City of Troy this 16 day of October, 1918.

[Seal Rensselaer County.]

HANS DAHL,
County Clerk of Rensselaer County.

551 The Supreme Court of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of THE TROY UNION RAILROAD COMPANY, Plaintiff in Error,

against

G. FRANK MEALY, GEORGE SPENCE, JR., GEORGE B. WALKER, and Silas Downs, Jr., as Assessors, and Hiram W. Gordinier, as Comptroller, of the City of Troy, New York, Defendants in Error.

To the Honorable Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York:

The petition of The Troy Union Railroad Company, a corporation organized under the provisions of the general railroad law of the State of New York, respectfully shows:

1. That heretofore, and in the year 1911, G. Frank Mealy, George Spence, Jr., George B. Walker and Silas Downs, Jr., constituting the Board of Assessors of the City of Troy, State of New York, assessed your petitioner in the several wards of said city for its railroad and other real property therein the sum of $1,000,000, and entered such assessment upon the assessment roll of said city for the year 1911; that within the time prescribed by the law of the State of New York for presenting to said assessors objections to assessments on such assessment roll your petitioner appeared before said Board of Assessors and filed objections to such assessment which

552 were that the same was erroneous, illegal and excessive for the reason that a law of the State of New York limited the amount at which the property of your petitioner could be valued for the purposes of taxation to $30,000; that by a contract executed as of December 3rd, 1852, by the City of Troy and your petitioner with other railroad companies stockholders thereof, it was agreed by said City of Troy that the property of your petitioner in that city was to be exempted from taxation upon any amount in excess of the amount of its capital stock, which was at that time and has since remained $30,000, which agreement on the part of said city was thereafter and in June, 1853, in that respect ratified and approved by a law then passed; and that said contract and law of the State of New York were binding upon the City of Troy in the making of said assessment in the year 1911 and any law thereafter passed, affecting such contract provision or repealing or attempting to repeal, such law, was unconstitutional, illegal and void.

Said assessors overruled and disregarded such objections, retained said assessment of $1,000,000 on said assessment roll, and, July 28, 1911, completed and filed the same with the comptroller of said city and published notice of such completion and filing thereof as provided by the tax law of the State of New York.

2. On the 12th day of August, 1911, which was within fifteen days after the publication of notice of the completion and filing of said assessment roll, a writ of certiorari was allowed and issued by the Supreme Court of the State of New York, on the application

of your petitioner, to review and reverse the decision and determination of said assessors in overruling and disregarding the objections of your petitioner to said assessment of $1,000,000 and retaining the same as originally entered on said completed roll, in which
553 application for such writ it was alleged by your petitioner such assessment was erroneous, illegal and excessive for the reasons, and because of the matters stated in the objections of your petitioner thereto, filed with said assessors as heretofore set forth herein, to which writ said assessors made and filed a return in which they denied that said contract and law of the State of New York, referred to in the petition for such writ, were binding upon the City of Troy, and alleged that such law of the State of New York, Chapter 462 of the Laws of 1853, relating to the taxation of the property of the Troy Union Railroad Company, was duly repealed by Chapter 201 of the Laws of 1909, and thereon and thereby the question as to the validity of said last mentioned law, under the provisions of Subdivision 1 of Section 10 of Article 1 of the Constitution of the United States, was directly presented.

3. Under the statute of the State of New York relating to a review of assessments by a writ of certiorari the Supreme Court of that State has jurisdiction and authority to refer issues raised by a petition for such writ and the return thereto to a referee to take the evidence produced by the respective parties and report the same to the Court with his conclusions thereon. In the exercise of that jurisdiction and authority the Supreme Court of that State referred the issues raised by the petition of The New York Central and Hudson River Railroad Company, a stockholder of your petitioner, for a writ of certiorari to review the assessment of the property of The Troy Union Railroad Company in the City of Troy for the year 1911, which assessment was against that company as well as your petitioner, and the return thereto, to Joseph A. Lawson, to take the evidence therein and report the same to the Court with his findings of fact and conclusions of law thereon.

554 By stipulation, your petitioner became and thereafter continued a party to that proceeding, in so far as the validity of Chapter 201 of the Laws of 1909, which purported to repeal Chapter 462 of the Laws of 1853, the exempting law heretofore mentioned, was involved therein, and the evidence introduced before said referee was taken in both cases. Such referee, August 13, 1914, made his report to the Supreme Court of the State of New York, with the evidence so taken by him, in which report his conclusion of law as to the validity of Chapter 201 of the Laws of 1909 was adverse to the claim and contention of your petitioner and upheld the validity of that law.

4. Under the law and practice in the Supreme Court of the State of New York a final determination and order in such a proceeding is required to be made by that Court at a Special Term thereof, and under and in accordance with such practice said proceeding to review the assessment of the property of your petitioner in the City of Troy for the year 1911, on the report of the said referee, was heard at a Special Term of the Supreme Court held in the City of

Albany, N. Y., January 2, 1915. On such hearing it was the claim and contention of your petitioner the contract between the City of Troy and your petitioner and the other railroad companies who were its stockholders and owners of terminals in the City of Troy that were to be affected by such contract executed as of the date of December 3, 1852, and Chapter 462 of the Laws of the State of New York of 1853, ratifying and confirming the exemption of the property of your petitioner in the City of Troy from assessment for the purpose of taxation therein and in the County of Rensselaer for any amount in excess of $30,000, the amount of its capital stock, which was provided for in said contract, with what was done by your petitioner thereunder and in execution thereof, constituted a contract therefor which could not thereafter be impaired by a sub-
555 sequent law of New York in form repealing Chapter 462 of the Laws of 1853, and therefore Chapter 201 of the Laws of 1909, which did in form repeal such chapter of the Laws of 1853, was in contravention of the provisions of Subdivision 1 of Section 10 of Article 1 of the Constitution of the United States, and so was invalid and void, and your petitioner was therefore entitled to have the assessment of its property in the City of Troy for the year 1911, complained of in that proceeding, reduced to $30,000, as provided in said contract and said Chapter 462 of the Laws of 1853.

Such Special Term, January 27, 1915, rendered its decision in said proceeding adversely to the claim and contention of your petitioner, dismissing its petition and quashing its writ of certiorari, with costs, in which it held and decided that Chapter 201 of the Laws of 1909, entitled, "An Act to repeal Chaptetr 462 of the Laws of 1853, entitled 'An Act providing for the taxation of the property of the Union Railroad Company in Troy,'" passed June 24, 1853, was and is constitutional, legal and valid and was not and is not an impairment of any obligation of any contract, and was not and is not in contravention of Subdivision 1 of Section 10 of Article 1 of the Constitution of the United States. Thereupon, March 12, 1915, a final order and judgment, dismissing the petition of your petitioner and quashing its writ of certiorari, with $27 19.84 costs and disbursements, was entered in the office of the Clerk of Rensselaer County.

5. Your petitioner, March 24, 1915, appealed from said final order and judgment to the Appellate Division of the Supreme Court of the State of New York in and for the Third Judicial Department, which Court, under the laws of that State, had jurisdiction to re-
556 view the decision of the Special Term of that Court previously stated herein, and reverse, modify or affirm the final order and judgment entered thereon, which appeal brought before that Court the entire record that was before the Special Term and upon which its decision was based, including the exceptions filed by your petitioner to the findings and conclusions of the Special Term and to the refusals to find as requested by your petitioner, which exceptions raised and presented the question as to the constitutionality and validity of said Chapter 201 of the Laws of 1909

under the provisions of Subdivision 1 of Section 10 of Article 1 of the Constitution of the United States.

Such appeal was thereafter heard by said Appellate Division of the Supreme Court at a term thereof held in the City of Albany, N. Y., commencing May 1, 1917. It was the claim and contention of your petitioner before that Court, as it was before the Special Term, Chapter 201 of the Laws of 1909 was invalid because in contravention of the provision of the Constitution of the United States prohibiting the passage by a State of any law impairing the obligation of a contract, as the right of your petitioner to the exemption of its property in the City of Troy from assessment for any amount in excess of $30,000 was a contract right which could not be taken away or impaired by any subsequent law of the State of New York repealing, or attempting to repeal, Chapter 462 of the Laws of 1853 of that State, and therefore the assessment complained of by your petitioner was illegal as to its entire amount in excess of $30,000.

Said Appellate Division, in the month of July, 1917, rendered its decision therein, in and by which its affirmed, with costs, the final order of the Special Term and the judgment entered thereon, previously stated herein, and thereby held adversely to the claim and contention of your petitioner that Chapter 201 of the Laws of 1909 was invalid and void because it was in contravention of the
557 provision of the Constitution of the United States prohibiting the passage by a State of any law impairing the obligation of a contract, and upheld the validity of such law.

6. Judgment having been entered in the office of the Clerk of Rensselaer County so affirming the final order of the Special Term and the judgment entered thereon, with $124.75 costs, your petitioner, leave to do so having been granted, October 1, 1917, appealed from such order and judgment of the Appellate Division to the Court of Appeals of the State of New York, which Court, under the laws of that State, has jurisdiction to hear and determine appeals to it from orders and judgments of the several Appellate Divisions of the Supreme Court of that State, upon which appeal the Supreme Court was required to and did return to said Court of Appeals the entire record which was before the Appellate Division upon its review thereof, with a copy of the order and judgment of said Appellate Division. Thereafter such appeal was heard by said Court of Appeals on the record so returned to it by the Supreme Court. On such hearing the claim and contention of your petitioner was the same as it had been at the Special Term and in the Appellate Division, that Chapter 201 of the Laws of 1909 was invalid and void because it was in contravention of the provision of the Constitution of the United States prohibiting a State from the passage of any law impairing the obligation of a contract, as such law, if held valid, did impair the obligation of a contract under which your petitioner was entitled to an exemption of its property in the City of Troy from assessment for the purposes of taxation for any amount in excess of $30,000, and the assessment of its property therein at $1,000,000 could not be upheld unless such law of 1909 was held to be

valid. It was, therefore, the claim and contention of your
558 petitioner that the order and judgment of the Appellate Division, affirming the final order of the Special Term and the judgment entered thereon, were erroneous and should be reversed and the assessment complained of should be reduced to and fixed at $30,000 and no more.

On the 11th day of July, 1918, said Court of Appeals rendered its decision in said case, affirming the order and judgment of the Appellate Division, with costs, and remitted the record before it to the Supreme Court to be proceeded upon according to law. In and by such decision that Court decided adversely to the claim and contention of your petitioner as to the constitutionality and validity of said Chapter 201 of the Laws of 1909 and upheld the constitutionality and validity thereof, and on that ground and for that reason affirmed the order and judgment of the Appellate Division, as heretofore stated. Upon such decision of the Court of Appeals therein a remittitur therefrom was duly issued in said case and the record thereof was by it remitted to the Supreme Court of the State of New York to be proceeded upon according to law. Upon such remittitur the Supreme Court of the State of New York, August 3, 1918, by its order then granted, made said order and judgment of the Court of Appeals the order and judgment of the Supreme Court, which thereupon became, and now is, a final order and judgment of that Court in said case entered in the office of the Clerk of Rensselaer County, in the State of New York, and by the decision and remittitur of the Court of Appeals and the order of the Supreme Court thereon is such final order and judgment herein of the highest Court of the State of New York in which a decision in said case could or can be had.

Your petitioner further shows that a Federal question was made and presented in said case, in that it was the claim
559 and contention of your petitioner before the assessors of the City of Troy, at the Special Term rendering judgment in the proceeding to review the assessment of its property in the City of Troy, complained of therein, in the Appellate Division of the Supreme Court, on the appeal of your petitioner from the final order and judgment of such Special Term, and in the Court of Appeals of the State of New York, on the appeal to it from the order and judgment of such Appellate Division, that the assessment of its property in the City of Troy for the year 1911 at $1,000,000 was erroneous and illegal because such property was exempt from assessment for any amount in excess of $30,000, under the contract of December 3, 1852, between the City of Troy and your petitioner, and Chapter 462 of the Laws of 1853, ratifying and confirming such exemption, and the execution of such contract by your petitioner; that Chapter 201 of the Laws of 1909, which in terms repealed Chapter 462 of the Laws of 1853, was an impairment of the obligation of such contract, in that it repealed, or attempted to repeal, such exemption; and that it was invalid and void because it was in contravention of the provisions of Subdivision 1 of Section 10 of

Article 1 of the Constitution of the United States, prohibiting the passage of laws of that character by the legislature of any State.

The decision thereon by the highest Court of the State of New York was adverse to the claim and contention of your petitioner that its property in the City of Troy was exempt from assessment for the purposes of taxation for any amount in excess of $30,000, under said contract of December 3, 1852, and said law of June 24, 1853, and Chapter 201 of the Laws of 1909, which purported to repeal Chapter 462 of the Laws of 1853, was in contravention of the provisions of Subdivision 1 of Section 10 of Article 1 of the Constitution of the United States, because, if held valid, it impaired
560 the obligation of the contract for the exemption of such property from assessment as and to the extent heretofore stated herein. Such decision, it is the claim and contention of your petitioner, was erroneous, in that it upheld the validity of said Chapter 201 of the Laws of 1909, and presents a Federal question which may and should be passed upon and determined by the Supreme Court of the United States.

Your petitioner further shows that under the laws of the State of New York there is no Chief Justice of the Supreme Court of that State; that the appellate jurisdiction of the Supreme Court of the State of New York is vested in four Appellate Divisions and is limited territorially within the State to defined departments thereof; that the Court of Appeals of that State has appellate jurisdiction superior to that of the Appellate Divisions of the Supreme Court; that such Court of Appeals consists of a Chief Judge and six Associate Judges; that the orders and judgments of that Court, to become the orders and judgments of the Supreme Court, require formal action of the Supreme Court making them the orders and judgments of that Court; and that because of the matters herein stated application is herein made to the Chief Judge of the Court of Appeals of that State for the allowance of a writ of error from the Supreme Court of the United State to the Supreme Court of the State of New York to bring before said Supreme Court of the United States the record in this case.

Wherefore, your petitioner presents herewith an exemplified transcript of the record of the Supreme Court of the State of New York in said case and prays that a writ of error to said Supreme Court be allowed; that citation be granted and signed; that the bond herewith presented be approved; and that the errors complained of may be reviewed in the Supreme Court of the United States and the
561 order and judgment aforesaid of said Supreme Court of the State of New York may be reversed.

Dated, October 22nd, 1918.

THE TROY UNION RAILROAD COMPANY,
By WILLIAM L. VISSCHER, *Its Attorney.*

STATE OF NEW YORK,
County of Albany, ss:

William L. Visscher, being duly sworn, says he is the attorney for The Troy Union Railroad Company, the petitioner in this proceeding; that he has read the foregoing petition, the contents whereof he knows to be true; and that this verification is made by him and not by the petitioner, for the reason that he has personal knowledge of the matters therein stated from his previous connection with this case.

WILLIAM L. VISSCHER.

Subscribed and sworn to before me October 23rd, 1918.
THOMAS F. McDERMOTT,
Notary Public, Rens. Co.

Certf. filed in Albany Co., N. Y.

[Endorsed:] The Supreme Court of the State of New York. The People of the State of New York ex rel. The Troy Union Railroad Company, Plaintiff in Error, against G. Frank Mealy and others, as assessors, and Hiram W. Gordinier, as Comptroller, of the City of Troy, Defendants in Error. (Original.) Petition for Writ of Error. William L. Visscher, Attorney for Plaintiff in Error, Albany, N. Y. Received and read October 23, 1918. Frank H. Hiscock, Chief Judge Court of Appeals.

562 Court of Appeals.

THE PEOPLE ex Rel. N. Y. C. & H. R. R. Co., Appellant,

against

G. FRANK MEALY and Others, as Assessors, Respondents.

THE PEOPLE ex Rel. TROY UNION RAILROAD COMPANY, Appellant,

against

THE SAME RESPONDENTS.

Appeal from a final order of the appellate division of the supreme court in the third judicial department in each of the above entitled proceedings, entered May 1, 1917, affirming in each proceeding a final order of the Albany special term dismissing the petition and quashing the writ of certiorari therein. The facts so far as material are stated in the opinion.

Lewis E. Carr, for appellants.
George B. Wellington, for respondents.

CHASE, *J.*:

In 1911 the assessors of the city of Troy placed on the assessment roll of said city an assessment as follows:

"Troy Union Railroad Co., Boston & Maine Railroad Co., Delaware and Hudson Railroad Co., New York Central and Hudson River
— Road Co.

The lands of roadbed and adjacent thereto in the several wards of the City, with rails, superstructures, depot buildings and ap-
563 purtenances being all the railroad property in the City of Troy located between Madison St. on the south, Hoosick St. on the north and the approach of the Delaware and Hudson Company's bridge on the west, excepting that portion assessed as franchises lying in public streets.

(Valuation, $1,000,000.) (Real property.)

Special franchise, 1911, $215,400."

The Troy Union Railroad Company and the New York Central and Hudson River Railroad Company each obtained a writ of certiorari to review the assessment. The statements hereinafter made are applicable to each proceeding.

A referee was appointed to take evidence upon the issues therein and report the same to the court with his findings of fact and conclusions of law. He reported in favor of dismissing the petition and quashing the writ. The proceedings including the evidence taken by the referee and his findings of fact and conclusions of law then came up for determination at the special term and the court affirmed the report of the referee and also made new findings and the petition was dismissed and the writ of certiorari quashed. (People ex rel. N. Y. C. & H. R. R. Co. v. Mealy et al., and, People ex rel. Troy Union R. R. Co. v. Mealy et al., 88 Misc. 649.) An appeal was taken to the appellate division of the supreme court. The order was there unanimously affirmed on the opinion of Chester, J., at the special term. (People ex rel. N. Y. C. & H. R. R. Co., v. Mealy, and People ex rel. Troy Union R. R. Co. v. Mealy, 179 A. D. 951.) An appeal has been taken to this court from the order entered thereon.

In 1851 four railroad companies each had the terminus of its road in the city of Troy. Each company generally propelled its cars on tracks by steam power, but the steam power was not used within the limits of the city of Troy. Within the city limits the cars were drawn by horses on tracks in public streets leading to the
564 central business part of the city. It does not appear that either company maintained a building in the city for the use of passengers.

By Chapter 255 of the laws of 1851 it was provided:

"The corporation of the city of Troy and the several railroad corporations whose railroads now or hereafter shall come to the city of Troy or which have or shall have their business terminus in, or run their trains to and from said city may subscribe for and become the owners of stock in a railroad corporation to be organized under" the general railroad act of 1850. (Chapter 140 Laws of 1850.)

It was also therein provided that the corporation of the city of Troy might, "borrow upon the bonds of said city, redeemable in not more than twenty years, at an annual interest of six per cent a sum not exceeding the cost of the construction of such railroad; but no bonds shall be issued therefor by the corporation of said city until said corporation shall by the several railroad corporations which are authorized to subscribe for stock by the first section of this act, and also by a mortgage on the railroad so to be constructed, its capital stock and franchises, be fully indemnified and made harmless against the payment of any bonds and the interest thereon which said city of Troy may issue under the authority of this act."

On July 31, 1851, articles of incorporation of the Troy Union Railroad Company were filed pursuant to said general railroad law of 1850. They provided that the capital stock of the company should be $30,000.

On the 2rd day of December 1852 a contract was entered into by and between the Mayor, Recorder, Aldermen and Commonalty of the City of Troy of the first part, Troy Union Railroad Company of the second part and the four railroad companies mentioned
565 of the third, fourth, fifth and sixth parts. The State of New York was not a party to the contract. The contract recited the organization of the Troy Union Railroad Company for the purposes provided by the act of 1851,—the appointment of commissioners under said act,—and the location of the railroad in the city of Troy according to a survey thereof, a copy of which was made a part of the contract,—and in substance that the four railroad companies mentioned had subscribed for all of the capital stock of the Troy Union Railroad Company. It also provided for a loan of money by the City of Troy to the Troy Union Railroad Company and for tolls to be paid to the Troy Union Railroad Company by the railroad companies using the tracks in the city of Troy.

It was also therein provided as follows:

"17. The party of the first part agrees that the common council of the city of Troy shall join in an application to the legislature of the State of New York that the Troy Union Railroad Company be exempt from taxation upon an amount exceeding the present amount of its capital stock * * * and if such law shall not be passed the common council of the city of Troy shall refund to the Troy Union Railroad Co. an amount equal to the city taxes imposed on the Troy Union Railroad Company for any calculation exceeding its present capital stock * * *."

Within a few days thereafter the Troy Union Railroad Company executed and delivered to the city of Troy a mortgage on its road, property and franchises to secure the payment of the principal and interest of the bonds issued by the city to raise money for the Troy Union Railroad Company and the four other railroad companies parties to the agreement executed and delivered to the city of Troy an agreement by which they indemnified the city of Troy against any default of the Troy Union Railroad Company upon its mortgage. The agreement also contained many provisions not important in determining the question before us.

566 On June 24, 1853, the legislature passed an act (Chapter 462 Laws of 1853) which provided "For the purposes of taxation in the city of Troy and in the County of Rensselaer the property of the Troy Union Railroad Company shall be estimated and assessed (as the common council of said city of Troy by its contract with said company dated December third *diehgteen* hundred and fifty-two agreed that the same should be) at the amount of the capital stock of said company and no more. * * *"

The parenthetical statement in the act as to the contract with the common council of the city of Troy is not in accordance with the fact. The contract on the part of the Mayor, recorder, aldermen, and commonalty of the City of Troy was, that the common council shall join in an application to the legislature of the State of New York to exempt the Troy Union Railroad Company from taxation upon an amount exceeding the capital stock of the Union Company. It further contracted that in case the legislature did not pass such an act, the common council would refund to the Troy Union Railroad Company an amount equal to the city taxes imposed on the Union Company for a valuation exceeding its then present capital stock. It thus appears that the contract of 1852 did not pretent to be and was not in fact a contract that the Union Railroad Company should be exempt from taxes for an amount on a valuation exceeding its capital stock. It also appears that the agreement in regard to refunding taxes as therein provided in no way refers to the county of Rensselaer. The act of 1853 assented to and provided for an exemption as therein stated but it did not make the state a party to the contract and it was in no sense a ratification of a contract for exemption theretofore made by the city of Troy. After the act of 1853 and prior to the year 1858 the Troy Union Railroad Company defaulted in paying the interest on the bonds of the city of Troy issued pursuant to said contract and an action was commenced
567 to foreclose the mortgage of the railroad company. On July 1st, 1858, another agreement was entered into by and between the same parties as in the agreement of December 3, 1852, which recited the act of 1851, the organization of the Troy Union Railroad Company and the construction of its road in the city of Troy, the receipt of money therefor from said city, and the execution of the mortgage as security for the bonds executed by the city of Troy for the money so advanced to the railroad company and the fact that an action had been commenced to foreclose said mortgage and provided:

"The parties hereto for the purpose of settling the matters involved in said suit and for the purpose of reforming the contract entered into by or on behalf of the above named parties bearing date the third day of December, 1852, adopt this instead of and in place of said contract which is hereby annulled."

It was therein provided that the railroad companies operating roads within the city of Troy should pay upon monthly assessments the necessary expenses and the indebtedness of the Troy Union Railroad Company as therein directed, and the rights and authority of the Troy Union Railroad Company and the other railroad companies

included in said agreement were stated and it was therein further provided:

"Eleven. The party of the first part agrees that if the law passed by the legislature of the state of New York June 24, 1853, relative to the taxation of the property of the Troy Union Railroad Company in Troy shall at any time be repealed the common council of the city of Troy shall join in an application to the legislature of the State of New York that the Troy Union Railroad Company be exempt from taxation upon an amount exceeding the present amount of its capital stock * * * and if such law shall not be passed the common council of said city of Troy shall refund to the Troy Union Railroad Company an amount equal to the city taxes imposed upon the Troy Union Railroad Company for any valuation exceeding its present capital stock * * *."

568 The act of 1853 was not repealed until 1909. From the organization of said Troy Union Railroad Company until the year 1885 the property of said company was assessed each year at $30,000.

In each of the years 1886 and 1887 the then assessors of the city of Troy assessed the Troy Union Railroad Company for its railroad station and other property in the city of Troy, the sum of $783,984. A proceeding was commenced by certiorari on behalf of the Troy Union Railroad Company to have the assessment for said years reduced to $30,000. The trial court decided that the relator was entitled to a reduction of the assessment to the sum of $30,000 and an order was entered in accordance with said decision. An appeal was taken therefrom to the general term of the supreme court where the court held (People ex rel. Troy Union Railroac Co. v. Carter, 52 Hun 458) that the act of 1853 is practically an act that all property of the company beyond the amount of $30,000 shall be exempt and the Court further say:

"This may be unjust to other persons, natural and artificial in the state, but the injustice, if any, is one that we cannot redress. The power is in the legislature."

On appeal to the Court of Appeals the order was affirmed without opinion. (People ex rel. Troy Union Railroad Company v. Carter, 117 N. Y. 625.)

It is stated that the Carter case was to determine whether the act of 1853 so long as it remained unrepealed was a lawful act of exemption. Its validity was therein upheld. The decision did not in any way pass upon the effect of repealing the act of 1853.

By Chapter 201 of the laws of 1909 the legislature repealed the act of 1853. The assessment of 1911 was made subsequent to the repeal of said act.

569 This appeal presents the question whether the act of 1909 is in violation of acticle 1 section 10 sub. 1 of the Constitution of the United States as an impairment of the obligation of the contracts of 1852 and 1858 or either of them.

It is provided by the Constitution of the United States that

"No state shall * * * pass any bill of attainder, ex post facto

law, or law impairing the obligation of contracts * * *." (Article 1, Sec. 10, Sub. 1.)

When the state through its legislature grants a franchise, privilege or exemption to a corporation either in the act incorporating it, or by other legislation, followed by action of the corporation under or in reliance upon the grant so made, it constitutes a contract, based on a valuable consideration, the obligation of which cannot be impaired by subsequent legislation. (Trustees of Dartmouth College v. Woodward, 17 U. S., 518; People v. O'Brien, 111 N. Y., 1, 49; New Jersey v. Yard, 95 U. S. 104; Wilmington R. R. v. Reed, 80 U. S. 264; City of Rochester v. Rochester R'way Co., 182 N. Y. 99.)

The consideration must be actual and not merely speculative and it must have been induced by the grant from the legislature of the franchise privilege or exemption.

The contracts hereinbefore mentioned and the acts of 1853 and 1909 must be construed in recognition of the rule of law relating to exemptions from taxation. The act of 1853 must also be construed in view of the obligations of the parties to the contract of 1852, under the terms thereof, and also in view of the acts of the railroad companies thereunder so far as they were consummated prior to the passage of said act of 1853.

In Yazoo R'way Co. v. Adams, 180 U. S. 1, 22, the Court say:

"Exemptions from taxation are not favored by law, and
570 will not be sustained unless such clearly appears to have been the intent of the legislature. * * * Such contract should receive a strict interpretation and every reasonable doubt be resolved in favor of the taxing power. Indeed, it is not too much to say that the courts are astute to seize upon evidence tending to show either that such exemptions were not originally intended, or that they have become inoperative by changes in the original constitution of the companies." (See City of Rochester v. Rochester R'way Co., supra.)

In the City of Rochester case this court say: "The true test of whether there was any consideration for the exemption granted by the statute is whether any acceptance of its terms and provisions was necessary to make it effectual. If not, how can it be said that the exemption is other than a privilege." (Page 116.)

The legislature of the state of New York did not by special act grant the charter to the Troy Union Railroad Company. That company was incorporated in 1851 under the general railroad act of 1850 and its stock was fully subscribed prior to 1853. Prior to the passage of the act of 1853 contracts had been made for the construction of the road in said city of Troy, and of the passenger house therein as provided by the contract of 1852, and the work under said contracts had been partially performed. As hereinbefore stated, the mortgage and the agreements as in the contract provided had been executed. $500,000 of the bonds of the city of Troy were issued in January, 1853, and prior to the passage of the act of 1853 the money from the sale of said bonds had been wholly or in part used for the purposes provided by the contract. Prior to that time all of the real property mentioned and described in the asssessment had been acquired by the Troy Union Railroad Company except a

few parcels of little importance or value acquired some time
571 thereafter. At that all or substantially all of the provisions of the contract of 1852 had been fully performed or contracts had been made therefor on which the Troy Union Railroad Company was obligated. Indeed every obligation provided by the contract of 1852 had at that time become fixed, determined and unrevocable. The act of 1853 was not an amendment of a charter previously granted by the legislature but an independent act in response to a request therefor in which the city of Troy joined. The contract of 1852 contained provisions which we have quoted that may in part have induced its execution but the contract was executed and the undertaking therein provided for was entered upon and every obligation thereof fully assumed from which the parties thereto could not recede before the legislature passed the act of 1853.

The act was not a consummation or ratification of an agreement the enforcement of which depended upon the granting of the act. No acceptance of the provisions of the act of 1853 was necessary to make it effectual. In the language of this court quoted how can it be said that the exemption is other than a privilege.

It appears from the contract of 1858 made by the same parties as those to the contract of 1852 that it was well known and recognized by them that the act of 1853 was gratuitous and not based upon a consideration and that the legislature might at any time thereafter repeal the same. This appears in the provision of the contract of 1858 that we have quoted, in which it is provided that if the legislature shall repeal the act of 1853 the common council of the city of Troy shall in substance, join in a further application to the legislature for the exercise by it of the authority then existing in the legislature to relieve the Troy Union Railroad Company from taxation as therein stated. The act of 1909 was not an impairment of a contract but the withdrawal by the legislature of its assent
572 to the exemption.

We do not in any way pass upon the question, under the contract of 1858, of the liability of the city of Troy to refund to the Troy Union Railroad Company an amount equal to the City taxes imposed upon the Troy Union Railroad Company for any valuation exceeding $30,000.

The assessment is not invalid even if the legal title to the property assessed is in the Troy Union Railroad Company.

The corporations named in the assessment other than the Troy Union Railroad Company are the successors in interest of the four railroad companies named in the contracts of 1852 and 1858. Each of said companies have rights and privileges in the tracks, passenger house and other property of the Troy Union Railroad Company as provided by the agreement of 1858.

What we have said in this opinion makes it unnecessary at this time to define the rights and privileges of the relator, the New York Central & Hudson River R. R. Co., in the property assessed. The assessment is of real property. It is provided by Section 9 of the

tax law as amended by Chapter 315 of the laws of 1911, as follows: "Real property shall be assessed in the tax district in which it is situated. In all cases the assessment shall be deemed as against the real property itself and the property itself shall be holden and liable to sale for any tax levied upon it."

As the property is sufficiently described on the assessment roll to reasonably identify and indicate to a person familiar with the same, the particular property which it was intended to assess, it is not invalid for any cause arising from ignorance or mistake as to the names of the owner or owners of the property assessed whether individually or a corporation. (Second Class Cities Law, Sec. 161.)

The order should be affirmed with costs.

[Endorsed:] Court of Appeals. The People ex rel. N. Y. C. & H. R. R. Co. v. G. Frank Mealy and others, as Assessors etc. Copy. Opinion by Chase, J.

573 The Supreme Court of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of THE TROY UNION RAILROAD COMPANY, Plaintiff in Error,

against

G. FRANK MEALY, GEORGE SPENCE, JR., GEORGE B. WALKER, and Silas Downs, Jr., as Assessors, and Hiram W. Gordinier, as Comptroller, of the City of Troy, State of New York, Defendants in Error.

Know all men by these presents, That we, The Troy Union Railroad Company, as principal, and National Surety Co. of #115 Broadway, New York, N. Y., as surety, are held and firmly bound unto G. Frank Mealy, George Spence, Jr., George B. Walker and Silas Downs, Jr., as Assessors, and Hiram W. Gordinier, as Comptroller of the City of Troy, State of New York, in the sum of one thousand dollars, to be paid to the said obligees, their successors, representatives and assigns; to the payment of which, well and truly to be made, we bind ou-selves, our successors, heirs and personal representatives, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of October, A. D. 1918.

Whereas, the above named plaintiff in error hath prosecuted a writ of error in the Supreme Court of the United States to reverse the order and judgment rendered against it in the above
574 entitled action by the Supreme Court of the State of New York, and entered in the County of Rensselaer in that State.

Now, therefore, the condition of this obligation is such, that if the above named plaintiff in error shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to

make good its plea, then this obligation shall be void; otherwise it remain in full force and effect.

[Seal Troy Union Railroad Company, Inc. —.]

THE TROY UNION RAILROAD COMPANY,
By JNO. T. PENCE,
One of Its Directors.

[Seal National Surety Company, New York, Incorporated 1897.]

NATIONAL SURETY CO.
JAMES L. NOONAN,
Attorney in Fact.

Attest:
D. W. PARDEE, *Secretary.*

STATE OF NEW YORK,
County of New York, ss:

On this 21st day of October, A. D. 1918, personally appeared before me Dwight W. Pardee, who, being duly sworn, deposes and says that he is the Secretary of The Troy Union Railroad Company the above named obligor, and is acquainted with the corporate seal of said company; that the seal attached to the fore-oing obligation is such corporate seal; that the same was attached thereto by him by authority of the board of directors of said company, and that he signed the same as Secretary by the like authority.

[Seal Joseph M. O'Mahoney, Notary Public, Bronx County, N. Y.]

J. M. O'MAHONEY,
Notary Public, Bronx County.

Clerk's No. 14, Register's No. 211.
Certificate filed in New York County.
Clerk's No. 88, Register's No. 10072.
My commission expires March 30, 1920.

575 Know all men by these presents, that the National Surety Company, a corporation duly organized and existing under the laws of the State of New York, and having its principal office in the City of New York, hath made, constituted and appointed and does by these presents make, constitute and appoint James L. Noonan of Albany, State of New York, its true and lawful attorney with full power and authority hereby conferred in its name, place and stead to sign, execute and acknowledge any and all bonds not exceeding $50,000 each in amount, guaranteeing the fidelity of persons holding places of public or private trust; guaranteeing the performance of contracts other than insurance policies; guaranteeing the performance of insurance contracts where surety bonds are ac

cepted by States or Municipalities in lieu of actual deposits; and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law required, and to bind the National Surety Company thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the common seal of the Company, and duly attested by its Secretary, hereby ratifying and confirming all the acts of said attorney pursuant to the power herein given. This power of attorney is made and executed pursuant to and by authority of the following by-law adopted by the Board of Directors of the National Surety Company at a meeting duly called and held on the Second day of February, 1909.

"Article XII. Resident Officers and Attorneys-in-Fact.

"Section 1. The President, First Vice-President or any other Vice-"President may from time to time appoint Resident Vice-Presidents, "Resident Assistant Secretaries and Attorneys-in-Fact to represent "and act for and on behalf of the Company, and either the Presi-"dent, First Vice-President, or any other Vice-President, the Board "of Directors or the Executive Committee may at any time remove "any such Resident Vice-President, Resident Assistant Secretary or "Attorney-in-Fact and revoke the power and authority given him.

"Section 4. Attorneys-in-Fact. Attorneys-in-Fact may be given "full power and authority to execute for and in the name and on "behalf of the Company, any and all bonds, recognizances, con-"tracts of indemnity and other writings obligatory in the nature of "a bond, recognizance or conditional undertaking, and any such "instrument executed by any such Attorney-in-Fact shall be as "binding upon the Company as if signed by the President and "sealed and attested by the Secretary."

And, at a meeting of the Board of Directors of the National Surety Company, duly called and held on the Seventh day of March, A. D. 1912, a quorum being present, the following additional section to the foregoing By-Law was adopted:

"Section 6. Attorneys-in-Fact. Attorneys-in-Fact are hereby au-"thorized to verify any affidavit required to be attached to bonds, "recognizances or contracts of indemnity, policies of insurance and "all other writings obligatory in the nature thereof, and are also "authorized and empowered to certify to a copy of any By-Law con-"tained in Articles VI, XII and XIII of the By-Laws of the Com-"pany."

In witness whereof, the National Surety Company has caused these presents to be signed by its President and its corporate seal to be hereto affixed, duly attested by its Assistant Secretary, this eleventh day of November, A. D. 1916.

NATIONAL SURETY COMPANY,
By WM. B. JOYCE, *President.*

Attest:
M. CROOKE,
Assistant Secretary.

STATE OF NEW YORK,
County of New York, ss:

On this eleventh day of November, A. D. 1916, before me personally came Wm. B. Joyce, to me known, who, being by me duly sworn, did depose and say that he resides in the City of New York; that he is the President of the National Surety Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

[SEAL.] WM. M. WEAVER,
Notary Public.

STATE OF NEW YORK,
County of New York, ss:

I, M. Crooke, Assistant Secretary of the National Surety Company, do hereby certify that the above and foregoing is a true and correct copy of a power of attorney, executed by said National Surety Company, which is still in full force and effect.

In witness whereof, I have hereunto set my hand and affixed the seal of said Company, at the City of New York, this 7th day of August, A. D. 1918.

[Seal National Surety Company, New York, Incorporated 1897.]

M. CROOKE,
Assistant Secretary.

576 STATE OF NEW YORK,
County of Albany, ss:

On this 22nd day of October, 1918, before me personally came James L. Noonan to me known, who, being by me duly sworn, did depose and say; that he resided in the City of Albany; that he is the Attorney-in-Fact of the National Surety Company, the Corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

NEWTON R. CASS,
Notary Public, Albany Co., N. Y.

577 National Surety Company of New York.

Wm. B. Joyce, President. Hubert J. Hewitt, Secretary.

Financial Statement, December 31st, 1917.

Assets.

Cash in Banks and Offices	$796,843.18
Liberty Bonds	1,136,250.00
Other Government, Municipal and Industrial Bonds, and Stocks	10,384,453.02
Real Estate, Mortgages and Collateral Loans	255,960.29
Unpaid Premiums (excluding Premiums 90 days overdue)	1,039,086.01
Accrued Interest and Accounts Receivable	642,538.98
Total	$14,255,131.48

Liabilities.

Unearned Premium Reserve	$3,239,280.34
Contingent Claim and Expense Reserve (Less Reinsurance)	1,465,189.63
Reserve for taxes and Unpaid Commissions (not due)	500,301.69
Accounts Payable and Expenses Incurred (not due)	346,007.73
Dividends Declared (Payable January 2nd, 1918)	120,000.00
Capital Stock	4,000,000.00
Surplus	4,584,352.09
Total	$14,255,131.48

NOTE.—Securities valued on basis determined by National Convention of Insurance Commissioners.

STATE OF NEW YORK,
County of New York, ss:

M. Crooke, being duly sworn, says: That he is Assistant Secretary of the National Surety Company, that said Company is a Corporation duly organized, existing, and engaged in business as a Surety by virtue of the Laws of the State of New York, and has duly complied with all the requirements of the Laws of said State and of the Laws of the State of New York applicable to said Company, and is duly qualified to act as Surety under such Laws; that said Company has also complied with and is duly qualified to act as Surety under the Act of August 13, 1894, entitled, "An Act Relative to Recognizances, Stipulations, Bonds and Undertakings, and To Allow Certain Cor-

porations To be Accepted As Surety Thereon," as amended by th Act of Congress of March 23, 1910. That the foregoing is a ful true and correct statement of the financial condition of said Compan on the 31st day of December, 1917.

[Seal National Surety Company. New York, Incorporated 1897.

M. CROOKE,
Assistant Secretary.

Sworn to before me this 7th day of August, 1918.
WM. M. WEAVER,
Notary Public for New York County, No. 28.

Certificate filed in Kings, No. 1 Nassau, Queens, No. 460, Bron No. 2, Richmond & Westchester Counties.
New York County Register's Office No. 10009.
Kings County Register's Office No. 101.
Bronx County Register's Office No. 238.
My commission expires March 30, 1920.

[Endorsed:] The Supreme Court of the State of New York. Th People of the State of New York, ex Rel. The Troy Union Railroa Company, Plaintiff in Error, against G. Frank Mealy and others, a Assessors, and Hiram W. Gordinier, as Comptroller of the City o Troy, Defendants in Error. Original. Bond on Writ of Erro William L. Visscher, Attorney for Plaintiff in Error, Albany, N. Y I hereby approve the within bond and surety this 23 day of October 1918. Frank H. Hiscock, Chief Judge of the Court of Appeals o the State of New York.

578 The Supreme Court of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of TROY UNION RAILROAD COMPANY, Plaintiff in Error,

against

G. FRANK MEALY, GEORGE SPENCE, JR., GEORGE B. WALKER, and Silas Downs, Jr., as Assessors, and Hiram W. Bordinier, as Comptroller, of the City of Troy, State of New York, Defendants in Error.

Now comes the said plaintiff in error and respectfully submits that in the record, proceedings and final judgment of the Supreme Court of the State of New York in the above entitled matter there is manifest error in this, to wit:

First. The Court erred in holding and deciding that Section 17 of the contract of December 3rd, 1852, between the City of Troy and The Troy Union Railroad Company with other railroad companies did not, when construed in connection with the other sections of said contract, the agreement with reference to its subject matter, which preceded the execution of that contract, and what was to be

thereafter done by said The Troy Union Railroad Company under and in the performance of said contract on its part, constitute an exemption of the property of The Troy Union Railroad Company, then and thereafter existing, from assessment for the purposes of taxation in the City of Troy and County of Rensselaer, for any amount exceeding $30,000, the amount of its capital stock, in so far as said City of Troy could contract for such exemption.

Second. The Court erred in holding and deciding that Chapter 462 of the Laws of 1853 of the State of New York, entitled "An
579 Act providing for the taxation of the property of the Union Railroad Company in the City of Troy," passed June 24 ,1853, was not a ratification and approval of the exemption of the property of The Troy Union Railroad Company in the City of Troy from assessment for the purposes of taxation therein for any amount in excess of $30,000, the amount of its capital stock, as the same was exempted in and by the contract of December 3rd, 1852, between the City of Troy and The Troy Union Railroad Company with other railroad companies.

Third. The Court erred in holding and deciding that the contract of December 3rd, 1852, between the City of Troy and The Troy Union Railroad Company with other railroad companies, and Chapter 462 of the Laws of 1853, relating to the taxation of the property of The Troy Union Railroad Company in the City of Troy, with full performance of such contract by The Troy Union Railroad Company, did not constitute a contract by the City of Troy and the State of New York that its property in the City of Troy, brought into existence as the result of such performance, should thereafter be exempt from assessment therein for the purposes of taxation for any amount in excess of $30,000, the amount of its capital stock.

Fourth. The Court erred in holding and deciding that because some part of the plan for the improvement the City of Troy desired and contracted for and about in said contract of December 3rd, 1852, was commenced and entered upon before Chapter 462 of the Laws of 1853 was passed, the exemption provided for therein became and was no part of the contract between the City of Troy and The Troy Union Railroad Company and was a mere gratuity on the part of the State of New York, and such law might thereafter be repealed without impairing the obligation of any contract, and
580 in refusing to hold and decide that said law of 1853, when passed, related back to the execution of the contract of December 3rd, 1852, and made such exemption valid and binding upon the State of New York from the date of such contract.

Fifth. The Court erred in holding and deciding that Chapter 201 of the Laws of 1909, which in terms repealed the exemption law of June, 1853, was not in contravention of subdivision 1 of Section 10 of Article 1 of the Constitution of the United States, in that it did not work or constitute an impairment of the obligation of any contract, and in refusing to hold and decide in support of, and in accordance with, the claim and contention of the plaintiff in error herein, that such law was in contravention of such provision of the Constitution of the United States and was therefore invalid and void.

Sixth. The Court erred in affirming the orders and judgments of the Courts below which upheld the assessment of the property of the plaintiff in error in the City of Troy for the year 1911 at $1,000,000, and dismissed its petition and quashed its writ of certiorari issued thereon, and in refusing to reduce the same to $30,000, the amount limited in the contract of December 3rd, 1852, and in the exemption law of June, 1853.

The People of the State of New York on the relation of The Troy Union Railroad Company therefore prays that a writ of error from the Supreme Court of the United States may issue to the Supreme Court of the State of New York; and further prays that the Supreme Court of the United States will reverse the said final order and judgment of the Supreme Court of the State of New York, and that the Troy Union Railroad Company, the plaintiff in error herein, may be restored to all things which it has lost by occasion of the said
581 final order and judgment, and further may have such other and further relief as may be proper and just.

Dated this 22nd day of October, A. D. 1918.

WILLIAM L. VISSCHER,
Attorney for The Troy Union Railroad Company,
Plaintiff in Error.

[Endorsed:] The Supreme Court of the State of New York. The People of the State of New York, ex rel. The Troy Union Railroad Company, Plaintiff in Error, against G. Frank Mealy and others, as Assessors, and Hiram W. Gordinier, as Comptroller of the City of Troy, Defendants in Error. Original. Assignment of Errors. William L. Visscher, Attorney for Plaintiff in Error, Albany, N. Y. Received and read October 23, 1918. Frank H. Hiscock, Chief Judge of Court of Appeals.

582 Supreme Court of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of THE TROY UNION RAILROAD COMPANY, Plaintiff in Error,

against

G. FRANK MEALY, GEORGE SPENCE, JR., GEORGE B. WALKER, and Silas Downs, Jr., as Assessors, and Hiram W. Gordinier, as Comptroller, of the City of Troy, State of New York, Defendants in Error.

The above entitled matter coming on to be heard upon the petition of the Plaintiff in Error therein for a Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of New York, and upon examination of said petition and the record in said matter, and desiring to give an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter:

It is Ordered, that a Writ of Error be, and is hereby allowed, to the Supreme Court of the State of New York from the Supreme

Court of the United States, and that the bond presented by said petitioner be, and the same hereby is approved.

Dated, October 23, 1918.

FRANK H. HISCOCK,
Chief Judge of the Court of Appeals of the State of New York.

[Endorsed:] The Supreme Court of the State of New York. The People of the State of New York, ex rel. The Troy Union Railroad Company, Plaintiff in Error, against G. Frank Mealy and others, as Assessors, and Hiram W. Gordinier, as Comptroller of the City of Troy, Defendants in Error. Original. Order Allowing Writ of Error. William L. Visscher, Attorney for Plaintiff in Error, Albany, N. Y.

583 THE UNITED STATES OF AMERICA, *ss:*

[Seal United States District Court, N. Dist. of New York.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of New York, Greeting:

Whereas, in the record and proceeding and in the rendition of the judgment of a plea which is in the said Supreme Court of the State of New York, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had between The People of the State of New York on the Relation of the Troy Union Railroad Company, Relator, Appellant, and G. Frank Mealy, George Spence, Jr., George B. Walker and Silas Downs, Jr., as Assessors, and Hiram W. Gordinier, as Comptroller of the City of Troy, State of New York, Defendants, Respondents, wherein was drawn in question the validity of a statute of, or an authority exercised under, said State of New York, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity and against the claim and contention of said relator-appellant with reference thereto, a manifest error hath happened, to the great damage of the said The Troy Union Railroad Company, as by its petition appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the
584 same at Washington on the 21st day of November, 1918, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward F. White, Chief Justice of the said Supreme Court, the 25th day of October, in the year of our Lord 1918.

[Seal United States District Court, N. Dist. of New York.]

W. S. DOOLITTLE,
Clerk of the District Court of the United States
for the Northern District of New York,
By G. A. PORTER, *Deputy.*

Allowed by me October 23, 1918.

FRANK H. HISCOCK,
Chief Judge of the Court of Appeals
of the State of New York.

[Endorsed:] The Supreme Court of the United States. The People of the State of New York, ex rel. The Troy Union Railroad Company, Plaintiff in Error, against G. Frank Mealy and others, as Assessors, and Hiram W. Gordinier, as Comptroller of the City of Troy, Defendants in Error. Original. Writ of Error. William L. Visscher, Attorney for Plaintiff in Error, Albany N. Y.

585 UNITED STATES OF AMERICA, *ss:*

To G. Frank Mealy, George Spence, Jr., George B. Walker, and Silas Downs, Jr., as Assessors, and Hiram W. Gordinier, as Comptroller, of the City of Troy, State of New York:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within thirty (30) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of New York in the County of Rensselaer in that State, wherein The People of the State of New York, on the relation of The Troy Union Railroad Company, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the order and judgment rendered against the plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Frank H. Hiscock, Chief Judge of the Court of Appeals, this 23rd day of October, in the year of our Lord one thousand nine hundred and eighteen.

FRANK H. HISCOCK,
Chief Judge of the Court of Appeals
of the State of New York.

Service of the foregoing citation upon the defendants in error named therein is admitted for them October 29th, 1918, by Thomas

H. Guy, Corporation Counsel for the City of Troy, who has been their attorney in the State court and is their attorney herein.

THOS. H. GUY,
Attorney for Defendants in Error.

[Endorsed:] The Supreme Court of the State of New York. The People of the State of New York, ex rel. The Troy Union Railroad Company, Plaintiff in Error, against G. Frank Mealy and others, as Assessors, and Hiram W. Gordinier, as Comptroller of the City of Troy, Defendants in Error. Original. Citation with Proof of Service. William L. Visscher, Attorney for Plaintiff in Error, Albany, N. Y.

586 The Supreme Court of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK ex Rel. THE TROY UNION RAILROAD COMPANY, Plaintiff in Error,

against

G. FRANK MEALY, GEORGE SPENCE, JR., GEORGE B. WALKER, and Silas Downs, Jr., as Assessors, and Hiram W. Gordinier, as Comptroller, of the City of Troy, State of New York, Defendants in Error.

STATE OF NEW YORK,
Rensselaer County, ss:

To the Supreme Court of the United States:

I, Hans Dahl, Clerk of the County of Rensselaer, and of the Supreme Court of the State of New York therein, the same being a court of record, do hereby certify that the foregoing are the original writ of error allowed in the above action by the Chief Judge of the Court of Appeals of the State of New York, petition for such writ, bond, order for writ to issue, citation thereon, with proof of service, assignment of errors and copy of opinion of the Court of Appeals, with a certified transcript of the record in the above entitled action, which original papers and certified transcript of record were filed in my office with the original writ of error herein, and are hereby returned to the Supreme Court of the United States in obedience
587 to the command of said writ.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office this 2nd day of November, A. D. 1918.

[Seal Rensselaer County.]

HANS DAHL, *Clerk.*

Endorsed on cover: File No. 26837. New York Supreme Court. Term No. 751. The People of the State of New York on the relation of The Troy Union Railroad Company, plaintiff in error, vs. G. Frank Mealy, George Spence, Jr., George B. Walker, and Silas Downs, Jr., as Assessors, and Hiram W. Gordinier, as Comptroller, of the City of Troy, State of New York. Filed November 29th, 1918. File No. 26837.

DEC 27 1919
JAMES D. MAHER,
CLERK

No. 24[redacted]63

Supreme Court of the United States

THE PEOPLE EX REL. THE TROY UNION RAILROAD COMPANY,

Plaintiff in Error,

vs.

G. FRANK MEALY and Others, as Assessors, and HIRAM W. GORDINIER, as Comptroller of the City of Troy, N. Y.,

Defendants in Error.

BRIEF FOR PLAINTIFF IN ERROR

LEWIS E. CARR,
Counsel for Plaintiff in Error,
Albany, N. Y.

WILLIAM L. VISSCHER,
Attorney,
Albany, N. Y.

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Supreme Court

OF THE

UNITED STATES

The People of the State of New York, on the relation of the Troy Union Railroad Company, Plaintiff in Error, *vs.* G. Frank Mealy, George Spence, Jr., George B. Walker and Silas Downs, Jr., as Assessors, and Hiram W. Gordinier, as Comptroller, of the City of Troy, State of New York, Defendants in Error.	No. 249.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This cause comes here on a writ of error to the Supreme Court of the State of New York to review a final order and judgment of that court made August 3d, 1918, and thereafter entered in the office of the Clerk of Rensselaer county, in that State, which affirmed a final order of that court dismissing a writ of certiorari issued on the application of the plaintiff in error to review an assessment of the

property of the plaintiff in error in the city of Troy, N. Y., for the year 1911, at the sum of $1,000,000. Such dismissal thereof was on the ground that the statute of the State of New York under which it claimed exemption from such assessment had been by *chapter* 201 *of N. Y. laws of* 1909 repealed, which it was held was valid. (*Petition for Writ of Error, pp.* 314 *to* 319, *Record; Order allowing writ, p.* 334; *Assignment of Errors, pp.* 332, 333, 334; *Writ of Error, p.* 335; *Final order and judgment of the Supreme Court of the State of New York, pp.* 312, 313.)

The final order and judgment of the Supreme Court of the State of New York was made and rendered in a proceeding instituted by the Troy Union Company to review by certiorari the assessment of its property in the city of Troy, N. Y., made by the assessors of that city in and for the year 1911 at the sum of $1,000,000, which assessment it claimed was erroneous and illegal because under a statute of the State of New York, *chapter* 462 *of laws of* 1853, its property in that city was exempt from assessment and taxation for any amount exceeding the amount of its capital stock, which was $30,000. The validity of *chapter* 201 *of laws of* 1909, which in terms repealed the law of 1853, was challenged on the ground that it constituted an impairment of a contract and so violated the provision of the Constitution of the United States prohibiting the passage of such a law by a state. (*Petition for Writ of Certiorari, pp.* 10, 11, 12, 13, 14, *Record; Order for Writ, p.* 15; *Writ of Certiorari, p.* 16.)

To such writ the defendant in error made and filed a return. (*P.* 17.)

The issues presented by such writ and return were referred to a referee to take the evidence offered and report it with his conclusions thereon to

the court. A like writ of certiorari was issued on the application of the New York Central and Hudson River Railroad Company to review the assessment made against it for the same property. Both proceedings were heard together. (*Pp.* 19, 20, 21, 22, *Record.*)

The evidence produced before the referee was reported by him to the Supreme Court, and that court at a Special Term thereof held January 2, 1915, made and rendered a decision to the effect that the assessment complained of was a valid one and dismissed the writs of both companies. (*Pp.* 237 *to* 245, *Record; New York Central requests to find, pp.* 246 *to* 266; *Troy Union requests, pp.* 266 *to* 288; *Order and Judgment dismissing writs, pp.* 301, 302.)

From those orders and judgments the relators appealed to the Appellate Division of the Supreme Court, and that court thereafter rendered its decision affirming them. (*Notices of Appeal, pp.* 302, 303, *Record; Orders and Judgments of affirmance, pp.* 305, 306, 307.)

From such orders and judgments the relators therein appealed to the Court of Appeals of the State of New York, the highest court in that State, and they were by that court affirmed. (*Order and judgment in Troy Union case, pp.* 312, 313, *Record.*)

On the application of the Troy Union Railroad Company a writ of error from this court to review such order and judgment was granted by the Chief Judge of the Court of Appeals of the State of New York, October 23, 1918, and issued October 25, 1918, as will appear from previous references in this statement. No writ of error was applied for by the New York Central and Hudson River Railroad Company as it could not be said the decision of the Court of Appeals in its case necessarily involved the

determination of a federal question. As both cases were heard in the New York courts on a single record, that has been returned to this court. Only such references will be made to it as relate to the case of the Troy Union Railroad Company. The question presented in its case is as to the validity of the law, *chapter* 201 *of laws of* 1909, which repealed the exemption law, *chapter* 462 *of laws of* 1853. Its contention is the exemption law of 1853 with what preceded and followed it constituted a contract which could not be destroyed or impaired by any subsequent law repealing or attempting to repeal it.

STATEMENT OF FACTS.

Situation in 1851.

In and prior to the year 1851, four railroads terminated in River street in the city of Troy—Rensselaer & Saratoga, Troy & Boston, Schenectady & Troy and Troy & Greenbush. The three first named came down that street, discharging and receiving passengers at different points which are designated in the record. (*Pp.* 55, 56.) The cars of the Rensselaer & Saratoga and Troy & Schenectady stopped on the west side of the river at Green Island and were drawn by horses across the bridge of the Rensselaer & Saratoga and down River street. Those of the Troy & Boston were in like manner brought down from Hoosick street into and along that street. Those of the Troy & Greenbush were in the same way drawn into and along that street from the south. There was no connection between the four roads, except as the three first named used the same tracks on River street from the Rensselaer

& Saratoga bridge south, and none of them had anything in the way of a passenger station. River street was then, and it has remained since, one of the principal business streets of the city. (*Pp.* 55, 56, *Record.*) The situation then existing was not satisfactory to the business men of the city, and negotiations to secure a change in it were entered upon by its officials and representatives of the four railroad companies. The object of those negotiations clearly appears from the evidence of Daniel Robinson who took part in them. (*P.* 57, *Record*):

> "Q. Do you know whether there were negotiations between the city authorities and the officials of those different railroads, with regard to taking the termini out of River street, and putting it in some more convenient place? What was the fact in regard to that?" "A. The facts were that the officials of the city of Troy and the officials of the railroads were in consultation for nearly six months to devise some practical way of getting through the city of Troy by steam. The city of Troy had its railroad to Schenectady which was being run at a loss, and our community was taxed every year for the support of that road. Our leading citizens, as well as members of the common council, and members of the railroads, had frequent meetings."

What was agreed upon.

The result of those negotiations was an agreement between the city authorities and the four railroads, under and by which the then existing tracks of the railroad companies were to be removed from River street, a single railroad for the joint use of the four companies was to be built on a new line away from that street, a union passenger station was to be con-

structed for their joint use and the four companies could operate their trains into and out of the city of Troy with their steam locomotives.

It was recognized the making of this improvement would be a matter of large expense. The railroad companies had not the means at their command with which to make it except by way of a loan. The city could, however, issue its bonds and loan the money obtained on them for this purpose, and that it undertook to do. It was to have the repayment of this money, or payment of the interest upon and principal of its bonds issued therefor, secured by a mortgage upon the new railroad to be built, which was to be guaranteed by the four railroad companies. At the time this improvement was agreed upon, or very shortly thereafter, the Troy & Schenectady road was leased by the New York Central Railroad Company, and the Troy & Greenbush road was leased by the Hudson River Railroad Company. The plan so agreed upon consisted of the following elements, all of which were essential parts of a single scheme to accomplish a single purpose.

(*a*) An act of the legislature of the State of New York to authorize the city of Troy and certain railroad companies to subscribe for and become owners of stock in a railroad corporation to be organized under the general railroad law for the construction of a railroad through the whole or some portion of the city of Troy. That act was passed and became *chapter* 255 *of the laws of* 1851. (*Pp.* 22, 23, *Record.*)

Act of 1851, chapter 255.

Section 1 of that law authorized the city of Troy and the several railroad corporations whose roads then came, or might thereafter come, into the city

of Troy, or which then had, or might thereafter have, their terminals in, or run their trains to and from that city, to subscribe for and become the owners of stock in a railroad corporation to be formed under the general railroad act of 1850 for the construction of a railroad through the whole or a portion of that city. That section also provided there should not be more than one railroad through that part of the city between Adams and Federal streets.

Section 2 authorized the city to borrow upon its bonds, bearing interest at 6 per cent. and redeemable in not exceeding twenty years from the date of their issue, a sum of money that would not exceed the cost of constructing such proposed railroad. Such bonds were not to be issued and the money obtained thereon paid over to the proposed new company until the city was fully indemnified against payment of the interest upon and principal of such bonds by a mortgage to be executed by such new company covering the railroad to be constructed, its capital stock and franchises, and by guaranty obligations of the several railroad corporations which might, under *section* 1, become stockholders therein.

Section 3 provided that all railroads then or thereafter running their trains to and from the city should on equal terms and with equal privileges use the railroad track or tracks thereby authorized to be constructed.

Section 4 designated commissioners to obtain subscriptions for the stock of the new company, who were authorized by a majority vote to locate the line of the proposed railroad, subject, however,

to the approval of a majority of all the members of the common council of the city. This was the first step in the execution of the plan agreed upon.

Organization of Troy Union R. R. Co.

(*b*) Organization of a railroad company under the general railroad law of 1850. That was accomplished by filing its articles of association as therein provided, July 21, 1851, a month after *chapter* 255 *of the laws of* 1851 became a law. (*Articles of Association, pp.* 23, 24, 25, *Record.*) The name of the corporation organized was the Troy Union Railroad Company, its capital stock was fixed at $30,000, its corporate existence was to be one hundred years, its purpose was to construct, maintain and operate a railroad for public use in the conveyance of persons and property pursuant to the provisions of the general railroad law, and it was also to be subject to the provisions of the law of 1851, previously referred to. The road to be constructed by it was to be within the city of Troy, not to exceed three miles in length, to consist of one or more tracks, and to be located under the provisions of the law of 1851. That was the second step in the plan.

Contract of 1852.

(*c*) An agreement between the city of Troy, the Troy Union Railroad Company and the four railroad companies whose tracks then came into the city. That agreement was executed by all the parties named in it, their acknowledgments bearing date December 11 and 15, 1852. The date of the agreement was December

3, 1852, and it was effective from that date. (*Copy of agreement of* 1852, *pp.* 80 *to* 88, *Record.*) It recited the organization of the Troy Union Railroad Company pursuant to the provisions of the law of 1851, the location of the railroad to be constructed by the commissioners named in that law, a survey of which was annexed to the agreement, the approval of such location by a majority of the common council, and the desire of the several railroad companies then running their trains to and from Troy to subscribe for and become owners of the stock of the Union Company upon certain terms and conditions. Such recitals were followed by details of the things the parties thereto agreed to recognize and perform which are summarized as follows:

Consent of the city to use of streets.

(1) The city granted to the Union Company its consent for the construction, operation and maintenance of the proposed new road in, along or across its streets, and for the location of its passenger station in Sixth street.

(*Sections* 1 *and* 2 *Agreement, p.* 81, *Record.*)

Equal stockholders and rights.

(2) Each of the four railroad companies executing the agreement was to subscribe for and take an equal amount of its $30,000 of capital stock, its stock and property were to belong to them equally, and they were to have equal rights in the use of its railroad and station. (*Sections* 3, 11, 20, 21, *Agreement, pp.* 81, 84, 86, *Record.*)

Issue of bonds and security for payment.

(3) The city was to issue its 6 per cent. bonds, payable not less than ten nor more than twenty years from their date, to an amount necessary to raise the money needed for the construction of the railroad and station, which bonds were to be sold by a committee appointed by the common council October 11, 1852, and the proceeds thereof paid to the Union Company as required in the prosecution of its work. As security for the payment of principal and interest of such bonds the Union Company was to execute to the city a mortgage on its road, property and franchises, and the four stockholding companies were to execute to the city their several agreements guaranteeing the payment of the principal and interest of the bonds to the extent of one-fourth each, not, however, exceeding $125,000.

To obtain the money to pay the interest and principal of the bonds, the Union Company was authorized to charge and collect from the operating companies tolls for the movement of their engines and cars over the road, the rates of which were stated. (*Sections* 4, 5, 6, 7, 8, 9, 10, *Agreement, pp.* 82, 83, 84, *Record.*)

Construction of railroad and swing bars and regulations.

(4) The Union Company was to construct the railroad with two or more tracks on the route indicated by the survey attached to the agreement. It was also to construct swing bars at street crossings to be operated when trains were passing, and upon its default the city might construct them and collect the expense of

their construction and maintenance from it, and it was to prescribe all necessary police regulations as to the use of the railroad and station. (*Sections* 12, 13, 23, *Agreement, pp.* 84, 86, 87, *Record.*)

Other railroads, rights and limitations.

(5) Any other railroad company running trains from Troy might on equal terms with the operating companies use the Union Railroad and station upon paying or assuming its ratable portion of the expense of its construction. No other railroad track than that of the Union Company was to be permitted between Hoosick and Adams streets in the city of Troy. (*Sections* 22, 25, *Agreement, pp.* 86, 87, *Record.*)

Exemption from taxation.

(6) *Section* 17 *of the agreement, p.* 85, *Record,* so far as necessary in this cause, is here quoted:

> "17. The party of the first part (City of Troy) agrees that the common council of the city of Troy shall join in an application to the legislature of the State of New York, that the Troy Union Railroad Company be exempt from taxation upon an amount exceeding the present amount of its capital stock. * * * And if such law shall not be passed, the common council of the city of Troy shall refund to the Troy Union Railroad Company an amount equal to the city taxes imposed on the Troy Union Railroad Company for any valuation exceeding its present capital stock. * * *"

These provisions of the agreement of 1852 clearly state what the city of Troy and the Union Company

and other railroad companies named in it agreed upon before the improvement was undertaken and the benefits that would accrue to each by the execution of the plan expressed in such agreement. What was so agreed upon was the result of the negotiations previously mentioned and was the third step of the plan.

Exempting act of 1853.

(*d*) Following and making effective *section* 17 of the agreement relative to exemption from taxation previously quoted, was an act of the legislature of the State of New York, ratifying and approving such exemption. That act was *chapter* 462 *of the laws of* 1853, which is here quoted. (*Pp.* 25, 26, *Record*):

> "An act providing for the taxation of the property of the Union Railroad Company in Troy, passed June 24, 1853, three-fifths being present.
>
> The people of the State of New York, represented in Senate and Assembly, do enact as follows:
>
> Sec. 1. For the purposes of taxation in the city of Troy, and in the county of Rensselaer, the property of the Troy Union Railroad Company shall be estimated and assessed (as the common council of said city of Troy, by its contract with said company, dated December third, eighteen hundred and fifty-two, agreed that the same should be) at the amount of the capital stock of said company and no more;
> * * *
>
> Sec. 2. This act shall take effect immediately."

This was the fourth step and completion of the plan.

Things contracted for and secured.

The things so far detailed were the means adopted to carry out and make effectual the plan agreed upon by and between the city and the four railroad companies to secure and promote the interests of each of the contracting parties. They together constituted a contract to provide for and secure three things:

First: The elimination of four railroad terminals and four roads to them, and the construction and future use of a single road available for each of the four companies over which they could run their trains by the use of steam locomotives.

Second: The removal of the tracks of the four railroads from River street and thus freeing that street from the burden of steam railroad operations therein.

Third: The construction and future use of a union passenger station to and from which the trains of the four railroads were, after its construction, to run.

Exemption from taxation a material part of the plan.

The exemption of the new railroad property to be created by the execution of the plan so agreed upon from assessment and taxation beyond the $30,000 limit fixed in the agreement was a substantial and material part of the contract for the improvement. It was an inducement to the four railroad companies to enter into the plan which was the subject-matter of the contract, incur the large expense it required and give up the rights they had in River street. The State, by the act of 1853, ratified and approved the contract so

far as its ratification and approval were required, by confirming the exemption of that property from taxation as the city had agreed it should be exempted.

Performance of the contract. Things done.

Following the things previously stated, the execution of the plan was entered upon and completed. The commissioners named in the act of 1851 laid out and located the line of the proposed new railroad which was adopted by the board of directors of the Union Company and the common council of the city, a copy of which was attached to the agreement of December 3, 1852. (*Pp.* 88, 89, *Record.*) On the line so located the Union Company constructed the road contemplated in the agreement. It took out the railroad tracks previously in River street and from the time its road was completed and put in operation no right in that street previously exercised by the railroad companies has been exercised or claimed therein by any one of them. The Union passenger station was located in Sixth street between Fulton and Albany streets, the Union Company acquiring the additional land for a new street in place of Sixth street. (*Pp.* 139, 140, 141, 143, *Record; chapter* 95, *laws of* 1853.) So much of the line as was in, along and across streets, was consented to by the city. (*Section* 1, *agreement of December* 3, 1852.) The land, for so much of the line as was outside of streets, was acquired by and conveyed to the Union Company. (*Finding* 11, *p.* 232, *Record.*) The contracts for constructing the line and station were let by the Union Company in February, 1853. (*P.* 142, *Record.*) The work of construction was practically

completed by the end of the year 1854, and the operation of the road and station commenced January 1, 1855. (*Finding* 12, *p.* 242, *Record.*) Such road and station have been continued and used since that time.

The total cost of the construction of the road and station, including the purchase of land therefor, was $707,000. (*Finding* 11, *p.* 242, *Record.*)

The money was obtained by and from the sale of bonds of the city of Troy to that amount which, as the bonds were sold, and it was required, was paid over to the Union Company. They were issued in three lots, first, $500,000, the estimated cost of the improvement; second, $180,000 additional to cover the anticipated cost in excess of $500,000; third, $27,000 additional to complete it. (*Pp.* 200, 201, 202, 272, *Record.*) December 17, 1852, the Union Company executed and delivered to the city of Troy a mortgage dated December 1, 1852, upon its railroad, capital stock, franchises, buildings, rights, property and appurtenances, and all its estate, right, title and interest therein in the city of Troy, to indemnify the city against all claims for the interest and principal of the bonds issued as previously stated to enable it to do what was required in the agreement of December 3, 1852. (*Pp.* 28, 30, *Record.*) In connection therewith the four railroad companies executed and delivered to the city their several guaranty agreements as provided in such agreement. Such agreements covered the $500,000 of bonds first issued. They were subsequently extended so as to take in the second and third issue of bonds, $180,000 and $27,000. (*Pp.* 32, 33, 34, 36, 38, 39, 41, 43, *Record.*) The mortgage and guaranty agreements in terms show that they were executed and delivered in execution of

the plan embodied in the agreement of December 3, 1852. It thus appears a contract was entered into for the purpose already stated, which was fully performed by the Union Company and the other railroad companies named, so that the new road and passenger station were completed and put in use January 1, 1855. The rights and obligations of all the parties had then become fixed. The things contracted about were no longer *in futuro*, they were *in esse*, and the contract was then and thereafter a completed one. The Union Company, by its performance, had then earned its right to the exemption of its property from taxation to the extent stated in that agreement and in the law of June, 1853.

Default of the Union Company.

As the Union Company was not an operating but a maintaining company, it had no revenues with which to pay the interest and principal of the city bonds and maintain the road and station, except receipts from the operating companies for their use. The method of tolls provided in the agreement of December 3, 1852, failed to produce the revenue needed. Its tendency was to reduce rather than increase the amount of business done by the operating companies.

As no summary way of enforcing collection of the bills for tolls was provided in that agreement, some of the operating companies failed to pay, and the result was the Union Company defaulted in its payments of interest on the bonds of the city and a foreclosure action was commenced by the city in 1857. (*Summons and complaint, pp* 27 *to* 31; *Report of Committee, pp.* 224 *to* 228, *Id.*)

That situation required some change in the old agreement to remedy the defect thus revealed.

Reformed agreement of July 1, 1858.

For the purpose of settling the matters involved in the default of the Union Company and the resulting foreclosure action, the city, the Union Company and the then operating companies entered into and executed what thereafter was called the reformed agreement, which was dated July 1, 1858, and took the place of the one of December 3, 1852. It appears on *pp.* 92 *to* 98, *Record.* It recited (*p.* 92) the act of 1851; the organization of the Union Company, its construction of a railroad in Troy; the commencement of a foreclosure action of its mortgage to the city; and the desire of the parties to settle the matters involved therein and reform the agreement of December 3, 1852. Then followed the provisions of the new agreement. A brief reference to them will show the respects in which it differed from the old one.

Sections 1 *and* 2 continued the consent of the city previously given to the maintenance and operation of its railroad by the Union Company in, along and across its streets and its occupation of Sixth street for its passenger station. (*Pp.* 92, 93, *Record.*) They were a recognition of uses previously granted which were continued. *Section* 3 provided for raising the money required by the Union Company by monthly assessments to be made by it upon the operating companies. As by *section* 14 (*p.* 97, *Record*), the four operating companies were to be equal owners of the stock of the Union Company, such assessments were to be equal. By *section* 4 each of the operating companies agreed to pay the assessments so to be made by the Union Company, and in case of default in so doing continuing beyond thirty days, the Union Company was authorized to

exclude such defaulting company from the use of the road and station until payment was made. (*P.* 93, *Record.*) This was a new provision which remedied a defect in the old agreement by giving to the Union Company a summary means for the collection of its assessments. *Section* 5 provided the four operating companies named in it should have equal rights and privileges in the railroad, station and other property of the Union Company, subject to its reasonable and uniform rules, regulations and rent charges for offices in the station. (*Pp.* 93, 94, *Record.*) This was a reproduction of the old agreement in those respects. *Section* 7 provided that two of the operating companies, New York Central and Hudson River, should each own one-fourth of the railroad, station and all other property, rights and franchises of the Union Company, subject to the lien of the mortgage to the city of Troy, and the other two, Rensselaer & Saratoga and Troy & Boston should each own one-fifth. (*P.* 94, *Record.*) This was in substance *section* 21 of the old agreement (*p.* 86, *Record*), except that the rights of the two last named companies were limited to fifths. The change of "shall belong to" in the latter, to "own" in the former, was in the form of the agreement rather than in its substance. The difference in the quantity of ownership resulted from the developments in connection with the foreclosure suit and its settlement. By the default of the Union Company the city was required to pay the interest on its bonds. In the settlement it wished to have the operating companies execute agreements to the city directly assuming each one-fourth part of the debt and interest the city had paid. The New York Central and Hudson River Companies did that. The Rensselaer & Saratoga and Troy & Boston Companies were not willing to

do that, but limited their obligations, the former to $125,000, and the latter to $100,000. (*Report of committee, pp.* 226, 227, *Record.*) As their assumption of the debt was unequal, their rights in the property were regulated accordingly. That, however, related to an ultimate division or apportionment and did not relate to the period during which the road was operated by them. (*Section* 8 *reformed agreement, pp.* 94, 95, *Record.*) *Sections* 9 *and* 10 were reproductions of *sections* 11 *and* 12 of the old agreement. (*Pp.* 90, 84, *Record.*)

As *section* 11 of the reformed agreement dealt with the matter of the exemption of the property of the Union Company from taxation which was provided for by *section* 17 of the old agreement, such section is here quoted so far as necessary:

> "Eleventh: The party of the first part agrees, that if the law passed by the legislature of the State of New York June 24, 1853, relative to the taxation of the property of the Troy Union Railroad Company in Troy, shall at any time be repealed, the common council of the city of Troy shall join in an application to the legislature of the State of New York, that the Troy Union Railroad Company be exempt from taxation upon an amount exceeding the present amount of its capital stock * * * and if such law shall not be passed, the common council of the city of Troy shall refund to the Troy Union Railroad Company an amount equal to the city taxes imposed upon the Troy Union Railroad Company for any valuation exceeding its present capital stock. * * *"

Comparison of that section with *section* 17 of the old agreement previously quoted makes it clear the intent of the city was to continue the exemption provided for in the agreement of December, 1852, and the act of June, 1853.

The remaining sections of the reformed agreement were substantially the same as those in the old agreement and do not require comment here. They are not involved except in an indirect way in the questions presented in this case.

Acts of the parties under it.

That agreement was duly executed by the city of Troy and the railroad companies named in it and parties to it. Such execution of it was on different dates in November, 1858, but it was in effect from its date, July 1st, of that year. No other agreement was at any time executed in connection with it or to take its place. Under it the affairs of the Union Company and the operating companies in the city of Troy and their business transactions and relations with each other and the city have been conducted to the present time, a period of sixty-one years. No conveyance or instrument in form or effect a conveyance of the property of the Union Company to the operating companies was ever executed. (*Requests* 16, 17, 18 *found, pp.* 276, 277, 278, *Record; Conclusion of law* 1, *in decision, p.* 245, *Id.*)

The bonds issued by the city to obtain the money required for the improvement agreed upon were all paid and the mortgage given to the city by the Union Company to secure their payment was discharged of record prior to July 20, 1901. (*Finding* 16 *in decision, p.* 243, *Record.*)

From 1855, when the road and station were completed, to 1906, a period of 51 years, the assessment of the property of the Union Company was $30,000. (*Findings* 17 *and* 18, *in decision, same page.*)

In 1886 and 1887, the assessors of the city of Troy assessed the property of the Union Company $783,984 in each year. Those assessments were reviewed

upon writs of certiorari issued on the application of the Union Company. In those proceedings it was the contention of the city of Troy, the act of 1853 which limited the assessment of the property of the Union Company to $30,000, was invalid. It was held by the Special Term, the General Term and the Court of Appeals, the act of 1853 was a valid exemption act and the assessments complained of were erroneous and should be reduced to $30,000 for each year. *People ex rel. Troy Union v. Carter and others,* 52 Hun, 458; *affirmed* 117 N. Y. 625; *General Term opinion, pp.* 116, 117, *Record.*

In 1901 and following years the State board of tax commissioners assessed the Union Company for a special franchise under the special franchise assessment law of that State. The validity of such assessments was contested by the Union Company because they were in excess of the limitation of $30,000 in the act of 1853. In 1907 the assessors of the city of Troy assessed the property of the Union Company at $1,000,000. Such assessment was against the Union Company, and the then operating companies, and like assessments were made in 1908 and 1909. The city contended in proceedings to review those assessments the title to nine-tenths of the property of the Union Company had been transferred to the operating companies by the reformed agreement of 1858, and they were not entitled to the exemption contained in the act of 1853. All of those proceedings were settled before any decision was rendered in them. Such settlement did not in terms or effect bar or preclude the Union Company or the operating companies from instituting proceedings at a subsequent time to review assessments of the property of the Union Company. (*Request* 27 *found, p.* 281, *Record.*)

Repealing act of 1909.

In 1909, upon the application of the city of Troy to the legislature, *chapter* 462 *of the laws of* 1853, the exemption act was repealed. *Chapter* 201 *of the laws of* 1909. That act has so far in this proceeding been held to be valid and for that reason and on that ground the assessment complained of by the Union Company has been upheld.

Federal question presented.

The validity of the repealing act, *chapter* 201 *of the laws of* 1909, is the federal question presented. The contention of the Troy Union Company, plaintiff in error, has been at all stages of the proceeding to review the assessment of 1911, and is here, the agreement in 1851 and 1852 between the city of Troy and the railroad companies then entering that city, for the construction of a new railroad not on River street for the joint use of those companies and a union passenger station, and the removal of their railroad tracks from River street, and its performance by the Troy Union Railroad Company constituted a contract, of which the exemption of the property thus brought into existence from taxation to the limited amount of $30,000 was an essential part, and that the right of the Troy Union Railroad Company to such exemption which the city of Troy agreed to in the formal contract of December, 1852, and was ratified and approved by the legislature of the State of New York in June, 1853, became, upon the completion of the road and station, a contract property right of that company which could not be taken away or impaired by any subsequent statute enacted by the legislature of that State. As *chapter* 201 *of the laws of* 1909 was a statute of that char-

acter, it was invalid under *subdivision* 1 *of section* 10 *of article* 1 *of the Constitution of the United States.* The decision of the Court of Appeals of the State of New York, and the order of the Supreme Court of that State entered thereon, were in favor of the validity of that statute. A federal question was directly involved and necessarily decided by the New York State Court and is in like manner presented here.

How the federal question was raised.

July 21, 1911, one of the days on which complaints might be made to the board of assessors of the city of Troy with reference to the assessments of that year, the Troy Union Railroad Company filed with such board its objections to its assessment of $1,000,000, in which it stated such assessment was illegal, erroneous and unlawful because its property was exempted from taxation in excess of $30,000, the amount of its capital stock, by a contract executed by the city of Troy in December, 1852, and by a statute of the State of New York; that such contract and statute were binding upon the city of Troy in levying such assessment, and that they could not be impaired by any subsequent legislation and any act thereafter passed repealing or attempting to repeal such statute was unconstitutional, illegal and void. (*Pp.* 215, 216, *Record.*) Such objections were disregarded and the assessment confirmed. The same objection to the assessment was presented to the Special Term. That court refused to find the request of the Troy Union Railroad Company that the agreement entered into between the city and the railroad companies, which included the exemption of the property of the Union Company from taxation in any amount exceeding

$30,000, with what was done in execution of it, constituted a valid and binding contract. (*P.* 283, *Record.*) It also refused to find the exemption of its property from taxation as stated above was one of the considerations for the performance of the contract, and so was a contract right and not a gratuity. (*Pp.* 283, 284, *Id.*) It also refused to find that upon performance of the contract by the Union Company, the legislature of the State of New York had no legal right to thereafter withdraw its assent to such exemption. (*P.* 284, *Id.*) It also refused to find that *chapter* 201 *of the laws of* 1909 (the repealing act) was and is unconstitutional, illegal and void in that it was and is an impairment of the obligation of a contract in contravention of *subdivision* 1 *of section* 10 *of article* 1 *of the Constitution of the United States.* (*P.* 286, *Record.*) On the contrary, it found that was a valid law, and was not and is not an impairment of any obligation of any contract. (*P.* 245, *Id.*)

Its order dismissing the writ of certiorari issued on the application of the Union Company was the logical and necessary result of its finding and refusals to find relative to the validity of that law.

The Appellate Division affirmed the order of the Special Term without opinion. The Court of Appeals affirmed the order and judgment of the Appellate Division. From the opinion of that court (*pp.* 320 *to* 327, *Record*), it is plain its decision upheld the validity of the repealing act. So at every stage of this proceeding the plaintiff in error raised the question of the validity of the repealing act of 1909. The determination of that question was necessary in the decision of the case. If that act was invalid the exemption act of 1853 was in force and effect when the assessment in question was made, and it was therefore an illegal assessment.

If it was valid the act of 1853 was no longer in effect, and the assessment was not an illegal one.

Errors assigned.

1. The Supreme Court of the State of New York erred in holding and deciding that *section* 17 of the contract of December 3, 1852, between the city of Troy and the Troy Union Railroad Company, with other railroad companies, did not, when construed in connection with other sections thereof, the agreement with reference to its subject matter, which preceded the execution of that contract, and what was to be thereafter done by the Union Company under and in the performance of such contract on its part, constitute an exemption of the property of the Union Company then and thereafter existing from taxation in any amount exceeding $30,000 in so far as the city of Troy could contract for such exemption.

2. That court erred in holding and deciding that *chapter* 462 *of the laws of* 1853 of the State of New York, entitled "An act providing for the taxation of the property of the Union Railroad Company in the city of Troy," passed June 24, 1853, was not a ratification and approval of the exemption of the property of that company in the city of Troy from taxation for any amount in excess of $30,000, the amount of its capital stock, as the same was exempted in and by the contract of December 3, 1852.

3. That court erred in holding and deciding that the contract of December 3, 1852, and *chapter* 462 *of the laws of* 1853, with full performance of such contract by the Troy Union Railroad Company, did not constitute a contract by the city of Troy and the State of New York that its property in the city of Troy, brought into existence as the result of such

performance, should thereafter be exempt from assessment for the purpose of taxation therein for any amount in excess of $30,000, the amount of its capital stock.

4. That court erred in holding and deciding that because some part of the plan for the improvement the city of Troy desired and contracted for in the contract of December 3, 1852, was commenced and entered upon before *chapter* 462 *of the laws of* 1853 was passed, the exemption provided for therein did not become and was no part of the contract between the city of Troy and the Troy Union Railroad Company, and was a mere gratuity on the part of the State of New York which might thereafter be repealed without impairing the obligation of any contract, and in refusing to hold and decide such law of 1853, when passed, related back to the execution of that contract and made such exemption valid and binding from its date.

5. That court erred in holding and deciding that *chapter* 201 *of the laws of* 1909 which in terms repealed the exemption law of June, 1853, was not in contravention of *subdivision* 1 *of section* 10 *of article* 1 *of the Constitution of the United States,* in that it did not work or constitute an impairment of the obligation of any contract, and in refusing to hold and decide in support of, and in accordance with, the claim and contention of the plaintiff in error herein that such law was in contravention of the Constitution of the United States and was therefore invalid and void.

6. That court erred in affirming the orders and judgments of the courts below which upheld the assessment of the property of the plaintiff in error in the city of Troy for the year 1911 at $1,000,000.

and dismissed its petition and quashed its writ of certiorari issued thereon, and in refusing to reduce the same to $30,000, the amount limited in the contract of 1852 and the exemption act of June, 1853.

ARGUMENT.

FIRST.

Chapter 201 of the laws of 1909, purporting to repeal chapter 462 of the laws of 1853, the exemption act, was not a valid enactment. Its purpose and effect was to impair the obligation of the contract entered into between the City of Troy and the railroad companies having their terminals in that city, for the construction and future use of a single railroad and passenger station, and its enactment was forbidden by subdivision 1 of section 10 of article 1 of the Constitution of the United States.

Plan for improvement constituted a contract.

1. The scheme of improvement in the city of Troy, in the various things provided for, was, when carried out and completed, a contract in and by which the city of Troy was bound, in its assessment of property in that city for the purposes of taxation, to limit the assessment of the property brought into existence by the execution and completion of the scheme to $30,000. The State of New York, by the act of June, 1853, which provided for the exemption of the property of the Troy Union Railroad Company in the city of Troy from assess-

ment exceeding its then capital stock as the city agreed it should be exempted in the contract of December 3, 1852, in legal effect became a party to that contract, it recognized its existence and ratified and approved so much of it as required the assent and approval of the State to make the exemption contracted for legally effective. The city and the railroad companies, parties to that contract were bound by it as between themselves. The city was bound, so far as it could legally bind itself, to limit the assessment of the property of the new company to $30,000. It was believed by the parties the assent and approval of the State was needed to make the exemption part of the contract legal. Such assent and approval was given in and by the act of June, 1853. From the time that act was passed, if the contract was performed, the State could not withdraw its assent and approval any more than the city of Troy could repudiate its obligations therein expressed. All of the things done and provided for constituted and were parts of a contract to accomplish a single purpose and when that contract was performed, by the city, the railroad companies and the State, the power to withdraw or change no longer existed. Reference to the features of the scheme and its purpose, as they appear in the record, will make the foregoing statement clear.

Benefit to the city.

(*a*) The city wanted something in the way of an improvement in connection with the four railroads then having their terminals in one of its principal business streets. Such terminals were not connected and neither of the railroads had a station. The business uses of River street were such the operation of

steam locomotives in it for the movement of cars and trains was not permitted, hence they were moved by horses, and the development of the city required the unification of the railroads away from River street. In making the improvement the interests of the city required, it was willing to aid, by issuing its bonds to obtain the money needed to make it, by assenting to the use of other streets than River street for the construction and operation of the new railroad and for a union passenger station, and by limiting the assessment of the new property resulting from the improvement to $30,000, the amount of the capital stock of the new company which was to be organized to construct and thereafter maintain the proposed new railroad and station. The four railroad companies then having their terminals in the city were willing to join in the scheme of a single railroad and union station for their joint use, to give up their rights in and remove their tracks from River street, and to assume the obligation of repaying the city the money it was willing to loan for the purpose of the improvement, but they wished something in the way of a return. It was estimated at the outset the cost of making the change would be $500,000, but it turned out the cost was in fact $707,000. By the construction of the new railroad and station new property was brought into existence. The exemption of that property from taxation upon any amount exceeding the amount of its capital stock promised a tangible return for what the railroad companies were to expend and surrender. These were the subjects of negotiation between the city and the railroad companies. Here, then, was a large subject to be the purpose of a contract and a meeting of the minds with reference thereto.

(*b*) The scheme which was the subject-matter of negotiation and agreement was made effective by the four things following, which were all details of the agreement for the improvement:

Elements of the improvement scheme.

(1) An act of the legislature of the State of New York, authorizing the city of Troy and the railroad companies to subscribe for stock in a railroad company to be organized under the general railroad law to construct and maintain a railroad in the city of Troy; also authorizing the city of Troy to issue its bonds and loan their proceeds to such new railroad company to such an amount as would enable it to construct the proposed new railroad and passenger station. That was *chapter* 265 *of the laws of* 1851. (*Pp.* 22, 23, *Record.*)

(2) Organization of the Troy Union Railroad Company under the general railroad law, with a capital of $30,000, to construct such a railroad as was indicated in the act of 1851. That was done July 21, 1851, and in its articles of association reference to that act was made. (*Pp.* 23, 24, *Record.*)

(3) Execution of a contract by and between the city of Troy, the Troy Union Railroad Company, the new company, and the four railroad companies then having their terminals in that city, providing in detailed way for the things to be done, the means by which they were to be done, the obligations of the respective parties and their rights and privileges in and in connection with the completed work. That was accomplished by the contract of December 3, 1852, in *section* 17, of which contract the city of Troy agreed so far as it could agree to a limitation of the assessment of the new railroad property,

performance of the contract would create to $30,000, the amount of the capital stock of the new company. (*Pp.* 80 *to* 88, *Record; section* 17, *p.* 85.)

(4) A legislative enactment, giving the assent and approval of the State of New York, to the agreement of the city of Troy to exempt the property of the new railroad company from assessment for the purposes of taxation beyond the amount of its then capital stock, which was $30,000. That was accomplished by *chapter* 462 *of the laws of* 1853.

The elements of the scheme thus stated clearly show what the city wanted and was willing to do, what the railroad companies were willing to do and were to receive and thereafter have in return, and what the State was willing to do on its part to aid in the completion of the scheme previously agreed upon. All of them were essential parts of a single scheme. There is nothing in the record justifying a conclusion that if any one of the things specified in the contract had been, before it was performed, repudiated, it would have been performed in any respect. If the city of Troy had, before performance of this contract was entered upon, notified the other contracting parties it would not abide by its exemption section, it is plain the other parties thereto would not have been bound to perform it on their part and could not have been required to perform it. When, however, the city, as it agreed it would, joined in an application to the legislature for the passage of a law ratifying and approving the exemption it had agreed should apply to the property of the new railroad company, and the law so ratifying and approving was enacted, the contract became complete and neither an agreeing or assenting party could thereafter withdraw therefrom. So far, the contract was on paper, and it may be as-

sumed without argument the parties thereto could have at that stage abandoned the scheme without legal liability to each other. They did not abandon the scheme wholly or in part but entered upon and completed its performance.

Performance of the contract.

(c) Following the execution of the contract of December 3, 1852, its performance was entered upon and the improvement contemplated and agreed upon was made and completed at the close of the year 1854. The commissioners named in the act of 1851 located the line of the new railroad which was adopted by the Union Company and approved by the common council of the city. The city issued its bonds, $500,000, $180,000 and $27,000, in the aggregate $707,000, to provide the money for this improvement. As required in the prosecution of the work, the money obtained on such bonds was paid by the city to the Union Company. That company bought and paid for the land required for the railroad and passenger station, taking the title thereto in its name; it let the contracts for the construction of the railroad and station and paid for the work as it progressed; it executed to the city a mortgage on its railroad station, other property, franchises and capital stock to indemnify the city against its bonds issued to provide the needed money for this purpose and the interest thereon; the four stockholding railroad companies executed to the city their several guaranty agreements to the extent of their respective interests to provide for any default of the Union Company in the payment of interest upon, and principal of, its bonds; the four railroad terminals were taken out of River street, the rights of their owners therein surrendered, and a single railroad

was constructed for their joint and common use; and a union passenger station was constructed, to and from which the trains of the four companies thereafter ran. The $707,000 loaned by the city and expended by the Union Company in making this improvement was repaid prior to July 26, 1901, when the mortgage given therefor was discharged of record. These facts appear in the evidence and were in substance found by the Special Term. (*Findings, pp.* 242, 243, *Record; Requests to find which were found, pp.* 269, 270, 272, *Id.*)

The scheme negotiated about and agreed upon was thereby completed. It was no longer a contract on paper but was, from the completion of the road and station, an executed contract by which all the parties to it were bound. The State could not at that stage or at any time afterwards withdraw its assent to, and approval of, the contract with reference to the exemption of the property thus created from taxation beyond the amount expressly limited in the contract, for the parties to that contract had acted upon that assent and approval, had expended money and incurred obligations, and had so changed their situation relative to the subject-matter of the contract it was not possible to restore them to their former situation. If the exemption stated in the contract was valid without the assent and approval of the State, it could not be destroyed or affected by repealing the act of 1853, and it was controlling when the assessment in question here was made. If, however, it was not valid without such assent and approval of the State, with it the exemption was valid and such assent and approval having been given by the act of 1853 and it having been acted upon by the parties to the contract it was then beyond recall. The contract was a single, not a severable one, it dealt with and provided for

a single purpose and was intended to, and did, secure a single end. The assent to and approval of the exemption by the State was as vital an element of the contract as the things to be and in fact done by the contracting parties whose assent thereto was evidenced by their execution of the contract of 1852. The agreement of the city that it would aid in securing the assent of the State to the exemption of this new railroad property from taxation beyond the amount of its then capital stock was an inducement to the Union Company to perform its contract and the assent given by the State in the act of 1853 became and was one of the considerations for such performance. It is therefore plain the contract for the improvement the city wished to have made was, January 1, 1855, no longer executory but was then a completed contract for all the parties to it had then fully performed.

Essential elements of a contract.

2. The essential elements of an executed contract are: (*a*) parties competent to contract; (*b*) a subject-matter of the contract; (*c*) an agreement or meeting of the minds of the parties as to such subject-matter; (*d*) a consideration for the promises of the parties; (*e*) performance by the parties of their respective undertakings. 13 Corpus Juris, 237, 238. *Justice v. Lang*, 42 N. Y. 493, 497. There it was said:

> "And six things appear necessary to concur: 1st. A person able to contract; 2d. A person able to be contracted with; 3d. A thing to be contracted for; 4th. A good and sufficient consideration or *quid pro quo;* 5th. Clear and explicit words to express the contract or agreement; 6th. The assent of both the contracting parties."

These elements are not confined to private parties. They equally apply to a grant by the State to a corporation which the corporation accepts and acts upon. *Trustees of Dartmouth College v. Woodward*, 4 Wheaton, 518, 656, 657, 658, 659.

Executed and executory contract.

The difference between an executory and executed contract is clearly stated. 13 Corpus Juris, 245, 246:

> "An executed contract is one where nothing remains to be done by either party. An executory contract is one in which a party binds himself to do or not to do a particular thing in the future. An executory contract conveys a chose in action; an executed contract a chose in possession. * * * While it has been said that an executed contract is not properly a contract at all, but that the contractual obligation having been performed, the parties are no longer bound, this is not strictly accurate, for the reason that in cases where the contract operates as a grant, there is an implied contract on the part of the grantor not to reassert the right which he has granted."

Consideration.

The consideration required in the elements of a contract need not be money paid or property delivered. It may consist of benefit to the promisor or harm or detriment to the promisee.

In 13 Corpus Juris, 315, 316, 317, 318, this feature is clearly stated:

> "It may be laid down as a general rule, in accordance with the definition given above, that there is a sufficient consideration for a promise if there is any benefit to the promisor or any loss or detriment to the promisee. It is not necessary that a benefit should accrue to the person making the promise; it is suffici-

ent that something valuable flows from the person to whom it is made, or that he suffers some prejudice or inconvenience, and that the promise is the inducement to the transaction. Indeed there is a consideration if the promisee, in return for the promise, does anything legal which he is not bound to do, or refrains from doing anything which he has a right to do, whether there is any actual loss or detriment to him or actual benefit to the promisor or not. * * * (318) In the matter of a benefit a mere expectation or hope, or a contingent benefit, is sufficient, as, for example, the expectation of advantage or profit from the thing promised."

Such elements all appear in the facts.

3. All of the essential elements of an executed contract stated in the foregoing citations are found in the facts in this case.

Parties.

(*a*) The parties were competent to enter into the contract to which they became parties. If it be assumed the city of Troy was not competent within and of itself to limit the assessment of the property to $30,000, it was competent to agree to such a limitation and appeal to the legislature of the State to assent to, ratify and approve what it had agreed to in that regard. When the legislature in June, 1853, did ratify and approve that limitation which the city had previously agreed to in its contract, the competency of the city to so agree could no longer be questioned.

(*b*) A subject-matter existed to be made the basis of a contract. The railroads as they existed were in some respects a detriment rather than a benefit to the business of the city. Combining them so there would be a single railroad through the city removed from one of its principal business streets and having a union passenger station to and from which the trains of all the railroads would come and depart was a matter of great importance and value to the city and to the railroads as well. Making that improvement was the subject-matter of the contract.

Subject-matter.

(*c*) The parties agreed upon the details of the plan whereby the improvement sought by the city and assented to by the railroads might be accomplished. Their minds met as to the things to be done by each and as to the anticipated result.

Agreement of the parties.

(*d*) There was ample consideration for the undertakings of the respective parties. The city was to be and was benefited by the single railroad and union station in place of the four disconnected railroads, and by the removal of their tracks from River street. The railroads were to be and were burdened with a large expenditure to make the improvement, but, when it was completed, they would be benefited by a reduction in expense in operating their trains in and through the city of Troy. They would also be benefited by the promised limitation of the assessment of the new property that would be brought into existence by the performance of the contract, to $30,000.

Consideration.

Performance of the contract.

(*e*) The contract was fully performed prior to, and not later than January 1, 1855. (*Findings, p.* 242, *Record.*) The new railroad and union station had then been constructed and were ready for use which then began and has since continued; the railroad tracks in River street were then or immediately afterwards taken up and the rights of the four railroad companies therein surrendered; the legislature had approved and ratified the exemption of the property of the Union Company from taxation beyond $30,000, as the city had agreed it should be exempted; and the city had been secured for the money it loaned to that company to make this improvement as the contract provided. It was, therefore, January 1, 1855, an executed contract, and the rights and obligations of the parties had then become fixed and established.

Prohibition of Federal Constitution.

4. The Constitution of the United States, *Sub.* 1, *Section* 10, *Article* 1, reads as follows: "No state shall • • • pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility."

The question to be determined under this provision of the Constitution is primarily, was there a contract that was or might be impaired by the legislative act challenged, and, in the second place, did the State law, challenged on this ground, impair its obligation.

First: The validity of *chapter* 201 *of the laws of* 1909, of the State of New York, which repealed *chapter* 462 *of the laws of* 1853 of the same State is challenged by the plaintiff in error on the ground that it constituted and was an impairment of the obligation of a contract which limited the assessment of its property in the city of Troy to $30,000. The facts, of which *chapter* 462 *of the laws of* 1853 constituted a material part, have been previously collated and discussed. Their legal effect in the way of constituting a contract may now be considered.

The law that is challenged.

Second: It is settled law that a grant by the legislature of a state to a corporation, either in the act incorporating it or by other legislation, of a franchise, privilege or exemption, followed by action of the corporation under or in reliance upon the grant so made, constitutes a contract, the obligation of which cannot be impaired by subsequent legislation. *Trustees of Dartmouth College v. Woodward*, 4 Wheaton, 518, 627, 644, 656 to 659. That case has been frequently cited by this court and the principle established by it accepted and followed.

Grants to corporations acted upon are contracts.

(*a*) It has been repeatedly applied to statutes, the effect of which was to exempt property from taxation and so of the class to which the ones under consideration here belong.

People ex rel. v. Carter, 52 Hun, 458.

In *People ex rel. Troy Union R. R. Co. v. Carter et al.*, 52 Hun, 458, *chapter* 462 *of the laws of* 1853, was the subject of controversy, and it was held to be a valid exemption act. At *page* 461 the court said:

> "It appears that this act was passed as the result of an agreement between the city of Troy and those railroads who were to join this new company for the purpose of constructing a union depot."

The affirmance of the judgment in that case by the Court of Appeals, 117 N. Y. 625, without opinion, must be accepted as an approval by that court of what had been decided by the court below. That was an adjudication by the highest court of the State of New York, construing and giving effect to a statute of that State.

New Jersey v. Yard, 95 U. S. 104.

In *New Jersey v. Yard*, 95 U. S. 104, a statute exempting from taxation was the subject of consideration. It was held the statute, with what was done under it, constituted a contract that could not be impaired by subsequent legislation. (*Pp.* 115, 116, 117.) There the court said:

> "There was a well understood subject of contract. The corporation wished authority to build a branch road or roads, with favorable route, and power to acquire right of way; and the State wished the vexed question of the right to tax the corporation to be settled, for the corporation denied the right of the State

to tax them, under their charter, until the road paid them a net income of seven per cent. per annum on its cost. The legislature said: 'If you will consent to pay one-half of one per cent. tax, as originally agreed, and commence to do this within one year from the time the road shall be open and in use to Phillipsburg, we will authorize an increase of ten millions of your capital stock and the franchise you seek as to branch roads, and will agree that the tax shall be fixed at one-half of one per cent.' Here was a subject of disagreement adjusted, additional rights granted, and the tax fixed, both as to its rate and time of commencement."

What was there said may well be applied to this case, for here was a plain subject of contract. The legislature of the State of New York, in and by the act of 1853, in effect said to these railroad companies: If you will combine your railroads in the city of Troy as the city wishes, and build and maintain a union station, such combined new railroad and station shall not be assessed for the purpose of taxation more than $30,000, the exemption agreed upon between you and the city, which is hereby ratified and approved. If such exemption was valid without such assent, action by the legislature was not required, and in that case it might be said the State gave nothing. If, however, action on the part of the State was required to make the exemption valid, the State did contribute to the making of a valid contract for this improvement. Its action was not a gratuity, but was a grant of something substantial in the way of benefit to the railroad companies and of inducement to enter upon the large undertaking contemplated. To that situation the foregoing quotation clearly applies.

Wilmington R. R. v. Reid, 13 Wallace, 264.

In *Wilmington Railroad v. Reid,* 13 Wallace, 264, a charter was granted to a railroad company by the State of North Carolina, in which its property was exempted from taxation. It built the road contemplated and subsequently the legislature undertook to impose a tax upon its property. This court held the legislature had no power to impose such tax as the charter from the State and building the railroad under its provisions constituted a contract that could not be impaired by subsequent legislation. The substance of the decision appears in the head note (*p.* 264):

> "A charter to a railroad company containing such an exemption is a contract; and a law subsequently passed levying a tax on the company's franchise, rolling stock, or real property, violates the obligation of the contract, and is void."

Humphrey v. Pegues, 16 Wallace, 244.

In *Humphrey v. Pegues,* 16 Wallace, 244, an act was passed incorporating a railroad company which did not contain any exemption of its property from taxation. A later act amending the incorporating act did contain such exemption. After the passage of the amendment, an act was passed conferring on a company, incorporated years before, which had not built any railroad, the rights, powers and privileges conferred on the first mentioned company by its charter. This court held the effect of the last act was to exempt the property of the company named in it from taxation and the legislature could not thereafter subject it to taxation by repealing the last mentioned act. (*P.* 249.)

In that case the exemption was not in or a part of the act incorporating the company, but was a grant to it of a benefit and privilege granted to a company previously incorporated and then existing. It was not unlike the present case where the legislative approval of, and assent to, the limitation upon the right and power of taxation was granted to a railroad company previously incorporated and then existing.

This and the other cases referred to above, with many others, were cited with approval in *Pearsall v. Great Northern Railway,* 161 U. S. 646, 662, where the rule to be applied in such cases is clearly and concisely stated:

Pearsall v. G. N. Ry., 161 U. S. 646.

> "Every valuable privilege given by the charter, and which conduced to an acceptance of it and an organization under it, is a contract which cannot be changed by the legislature where the power to do so is not reserved in the charter."

Wright v. Georgia R. R., 216 U. S. 420.

In *Wright v. Georgia R. R.,* 216 U. S. 420, the exemption from taxation was:

> "The stock of the said company and its branches shall be exempt from taxation for and during the term of seven years from and after the completion of the said railroad or any of them; and after that shall be subject to a tax not exceeding one-half of one per cent. per annum on the net proceeds of their investments."

In construing that provision this court held: (*a*) the capital stock referred to therein meant the property of the corporation and not the shares of stock in the hands of stockholders; (*b*) the exemption continued, even if the property appreciated in

value, and was not limited to the value existing at the beginning; (*c*) where such an exemption exists, an act of the State legislature attempting to tax the property by any other method or to any other extent than that specified therein, impaired the obligation of the charter containing the exemption and was unconstitutional under the contract clause of the federal constitution. (*Pp.* 426, 429, 430, 432.)

The decision in that case is of value here as the exemption there was similar in form to the one in this case; there the right to tax was limited to not exceeding one-half of one per cent. on the capital stock, which meant the property of the company; here the right to tax is on an amount not exceeding the present (1852) amount of the capital stock of the Union Company.

Home of Friendless v. Rouse, 8 Wallace, 430.

In *Home of the Friendless v. Rouse*, 8 Wallace, 430, 437, it was clearly pointed out that in construing statutes providing for exemption from taxation the intent of the legislature was to be ascertained and given effect:

> "It is true that legislative contracts are to be construed most favorably to the state if, on a fair consideration to be given to the charter, any reasonable doubts arise as to their proper interpretation; but, as every contract is to be construed to accomplish the intention of the parties to it, if there is no ambiguity about it, and this intention clearly appears on reading the instrument, it is as much the duty of the court to uphold and maintain it, as if it were a contract between private persons."

That rule is to be applied in this case to the act of 1853. Can there be any reasonable doubt that the legislature intended in that act to authorize and approve an exemption of the property of the Union Company in the city of Troy from taxation beyond the amount of the then capital stock of that company? It knew the city had agreed to such exemption as a part of the scheme for an improvement therein which it regarded as of importance and value. It knew the city had agreed with the Union Company to join in an application to it to so exempt the property of that company from taxation. This act which referred to such agreement in terms was the result of such application. There is no uncertainty as to the facts preceding, surrounding and connected with the passage of the act of 1853. There is no ambiguity in its terms, and they plainly reveal a legislative intent to exempt the property of this company from taxation as and to the extent the city had agreed it should be. Such intent is to be given effect under the rule stated above, and the act must be regarded as one exempting the property of the plaintiff in error from taxation beyond the amount of its capital stock.

This rule applies to municipal action approved by the State.

(*b*) The application of the rule of the cases cited and quoted from above is not limited to legislative acts creating corporations. In 13 Corpus Juris, 994, 995, it is said of exemptions of property from taxation:

> "But it is now settled law that a state, or one of its municipal divisions, may by contract, for a consideration, exempt from taxation, either wholly or partially, property, rights or franchises otherwise taxable under general laws."

Murray v. Charleston, 96 U. S. 432.

In *Murray v. Charleston*, 96 U. S. 432, the question arose as to an ordinance of the city of Charleston imposing a tax which provided for retaining by the city from interest payable on its obligations the amount of such tax, and it was held such provision in the ordinance was forbidden by the contract clause of the Constitution because it impaired the obligation of its contract to pay interest upon its obligations. At *p.* 444, Justice Strong, for the majority of this court, wrote:

> "A change of the expressed stipulation of a contract, or a relief of a debtor from strict and literal compliance with its requirements, can no more be effected by an exertion of the taxing power than it can by an exertion of any other power of a state legislature. The constitutional provision against impairing contract obligations is a limitation upon the taxing power, as well as upon all legislation, whatever form it may assume."

Again, *pp.* 448, 449:

> "There is no more important provision in the federal constitution than the one which prohibits states from passing laws impairing the obligation of contracts, and it is one of the highest duties of this court to take care the prohibition shall neither be evaded nor frittered away. Complete effect must be given to it in all its parts. The inviolability of contracts, and the duty of performing them, as made, are foundations of all well ordered society, and to prevent the removal or disturbance of those foundations was one of the great objects for which the constitution was framed."

Louisville v. C. T. Co., 224 U. S. 649.

In *Louisville v. Cumberland Telephone Co.*, 224 U. S. 649, the question related to a grant from a municipality to the telephone company and it was held that a charter granted by the State subject to conditions that might be imposed by the municipality became after acceptance of the conditions a grant not of the municipality but of the State. *Head Note, p,* 649, *Opinion, p.* 664.

G. T. W. Ry. v. South Bend, 227 U. S. 544.

In *Grand Trunk Western Ry. v. South Bend,* 227 U. S. 544, the question was as to the validity of a repealing ordinance of the city of South Bend under the contract clause of the Constitution. The decision of the Indiana State court upheld its validity. This court reversed such judgment and held the ordinance challenged was invalid. The following from the head note is of value in this case:

> "What the contract alleged to be impaired by subsequent legislation is, is a question which this court is bound to determine for itself independent of decisions of the state court.
>
> An ordinance conferring a street franchise, passed by a municipality under legislative authority, creates a valid contract according to its terms. * * *
>
> The contract clause prevents a state from impairing the obligation of a contract, whether it acts through the legislature or a municipality exercising delegated power."

To the same effect are *Mercantile Trust Co. v. Columbus,* 203 U. S. 311, 320; *New Orleans Gas Co. v. Louisiana Light Co.*, 115 U. S. 650, 662, 663, 664, 665; *Detroit United Ry. v. Michigan,* 242 U. S. 238, 247, 248, 249, 253.

The foregoing cases are illustrative of the principle applicable to this case. Here municipal and State action appear. The agreement of the municipality to the exemption of the property to be brought into existence as the result of performance of the contract preceded by a few months the legislative approval and ratification. Such approval and ratification in terms recognized the municipal agreement, and when the act of June, 1853, became a law the grant of exemption from taxation in excess of the amount of the capital stock of the union company was one from the State and not from the municipality.

Act of 1853 was not repealable.

5. The act of 1853 that was repealed by the act of 1909 was not a gratuity and therefore repealable at the will of the legislature. It was an essential and substantial part of a contract for an improvement the business interests of the city of Troy demanded. The courts below have been in error in so holding and deciding.

No right of repeal reserved.

First: The validity of the repealing act of 1909 cannot be sustained on the ground that the legislature in enacting it acted under a power of repeal which had been reserved to it in the act itself or which had been reserved to it generally as to acts of that kind. Numerous cases may be found where one or the other of the features stated above appeared and subsequent repealing acts were held to be valid. They have no application to this case for reasons to be now stated.

Such rights not reserved in act of 1853.

(*a*) The act of 1853 contained no reservation of a right to alter, amend or repeal it. It was to take effect immediately and was in effect, if not in terms, irrepealable. (*Pp.* 25, 26, *Record.*)

No general reservation.

(*b*) By *Section* 1 *of Article* VIII, *New York Constitution of* 1846, which was in effect when the act of 1853 was passed, provision was made for the formation of corporations. The last sentence of that section is here quoted:

> "All general laws and special acts passed pursuant to this section may be altered from time to time, or repealed."

It is clear the act of 1853 was not one coming within the reservation contained in that section of the New York Constitution which was the only general reservation therein contained. In *Attorney General v. North Amer. L. Ins. Co.*, 82 N. Y. 172, 182, it was held an act of the legislature granting an additional right to an existing corporation was not one coming within *Section* 1 *of Article* VIII *of the Constitution*. It is true the question in that case did not involve the reservation contained in the last sentence of the section, but it did require the court to determine whether or not a statute granting an additional right to an existing corporation was affected by any of the provisions of that section, and the decision was it was not so affected.

In this case the act of 1853 provided for the exemption of the Troy Union Railroad Company from taxation in any amount in excess of the amount of its then capital stock, which was $30,-

000. That company was organized in 1851. It was therefore an existing corporation when the act of 1853 was passed and to it that act related, as it provided for the exemption of its property from taxation. It was therefore an act coming directly within the principle decided in the case cited. It is not material under which sentence of this provision the question arises when the act that is the subject of consideration is plainly one of the class of acts the court held was not within that provision. The right of the legislature to repeal the act of 1853 was not reserved by this constitutional provision. Nor was it reserved in or by any general statute then existing which reserved a right to alter, amend or repeal statutes generally.

Act of 1853 not a gratuity.

Second: The act of 1853 was not a gratuity and for that reason granted to the Troy Union Railroad Company no permanent right which the legislature might not by a subsequent act take away. The conclusion of the court below that it was a gratuity and so repealable at will was rested upon the following facts, appearing in the record:

Basis of claim it was a gratuity.

(1) The agreement of the city of Troy in the contract of December 3, 1852, was not one to exempt the property of the new company but to join in an application to the legislature to have it exempted.

(2) The Troy Union Railroad Company was incorporated in 1851, so was in existence as a corpor-

ation when the act of 1853 was passed, and therefore did not accept a charter containing an exemption from taxation.

(3) The Troy Union Railroad Company had purchased nearly all the land required for the new railroad and station, and had let the contracts for constructing the road and station before the act of 1853 was passed. The city also had acted by issuing $500,000 of its bonds in advance of that act. The parties had therefore entered upon the performance of the contract before the legislature acted. (*Pp.* 325, 326.)

The effect of the contract of 1858 will be dealt with later. Here the question is as to the rights of the respective parties January 1, 1855, when the new railroad and station were completed and opened for use.

This reasoning is based on a mistaken and narrow view of the facts and leads to an erroneous result.

Facts conceded.

(*a*) It is true the Troy Union Railroad Company was organized in July, 1851; that the formal contract for the improvement which had been agreed upon was executed by the parties thereto in December, 1852; that the city of Troy issued its bonds to the extent of $500,000 to provide money for making this improvement, which were dated January 1, 1853; that the Troy Union Railroad Company acquired the title to the larger part of the land for the new railroad and station between the execution of the formal contract and July 1, 1853; and that it let the contracts for the work to be done and the materials to be furnished between January

31st and July 1st, 1853. These acts were parts of a single scheme which was intended to accomplish a single purpose. They are not to be considered and given effect separately, but are to be considered and given effect as a whole in connection with and in aid of the improvement the parties had agreed upon. The facts which are undisputed make this clear.

Plan agreed upon and acts of the parties.

(*b*) Prior to the organization of the Troy Union Railroad Company, a plan for this improvement in the city of Troy had been agreed upon in its entirety. Carrying out such plan and making the improvement required four things: (1) An act of the legislature authorizing the city to issue its bonds to such amount as was necessary to obtain the money required. (2) Organization of a new railroad company to construct and thereafter own the new railroad and station. (3) A formal contract containing the details of the plan and the obligations and rights of the parties in the construction of the new railroad and station, and in them and in their use after completion. (4) An act of the legislature approving and confirming the exemption of the new railroad property from taxation upon any amount in excess of the then capital stock of the new company, which was $30,000, which the city had agreed to in the formal contract. These were details the parties had agreed upon before *chapter* 265 *of the laws of* 1851 was passed. They were satisfied such details would be carried out by performance by each of the parties of their respective obligations and they entered upon such performance without waiting for the completion of the things that were substantial and material parts of the agreement.

What was done and when.

The first thing required was authority for the city to issue its bonds to provide the money needed to make the improvement. That was the foundation on which the execution and completion of the plan agreed upon rested. The money needed could not be otherwise obtained. The city could not issue its bonds without legislative authority. Such authority was granted by the act of 1851 which became a law June 20, 1851. It was the first step in the way of performance.

The second thing required was the organization of a new railroad company to construct and thereafter own the proposed new railroad and station. As there was to be thereafter a single railroad and station in place of the four roads then existing which were to be, after completion, for the joint and common use of the then existing railroads, it was necessary for a new railroad company to be organized to construct and thereafter maintain the new road and station. As a general railroad law had been adopted the preceding year, *chapter* 140 *of the laws of* 1850, such new company was organized under its provisions, July 21, 1851. That was after the act of 1851 was passed, and was the second step in the way of performance.

The city having been authorized by the legislature to issue its bonds, and the new railroad company having been organized, the parties were in a position where they could put in detailed form what each of them was to do and have in return for performance. What they were in a position to do they did in the formal contract of December 3, 1852. That was the third step in the way of performance.

As one of the features of the plan was that the

new railroad company should be exempt from taxation upon its property in the city of Troy except on the amount of its capital stock, which was $30,000, which was stated in the formal contract, and it seemed necessary that such exemption should be ratified and approved by the legislature, that was done by *chapter* 462 *of the laws of* 1853. That was the fourth step in the way of performance.

All of these things were necessary to complete the plan agreed upon in advance of any action. They could not all be done at one time for the later ones were dependent upon the performance of the earlier ones.

It is plain the agreements of the city to issue its bonds to provide the money required, to permit its streets to be occupied for the new railroad and station, and to assent to the exemption of the property of the new railroad company from taxation upon any amount exceeding the amount of its capital stock constituted a consideration for the agreements of such railroad company, to acquire the necessary property for and construct the new railroad and station, to secure the city for the money it loaned to it for that purpose and repay the same and to maintain such new railroad and station after their completion. Here were mutual obligations which constituted a consideration for the performance by each of the parties to the contract. Such consideration was entire, not severable. The exemption of the property of the new railroad company from taxation, as provided in the contract of December 3, 1852, and in the act of June, 1853, was a material and essential part of the consideration for the performance of its obligations. It became operative as a part of the consideration with the commencement of its performance and continued until its contract obligations were completed.

Intent of the city to exempt the new company.

(*c*) It is not an answer to the foregoing contention to say the city of Troy did not, in the contract of December 3, 1852, agree that the property of the new company should be exempt from taxation in excess of $30,000, but did agree to join in an application to the legislature that it should be so exempted. It did join in such application, and the legislature did, by *chapter* 462 *of the laws of* 1853, so exempt it. In dealing with this feature of the contract the intent of the city of Troy is to be sought for and applied. Such intent is to be ascertained from the language used, the surrounding circumstances and the object the parties had in view. *Maloney v. Iroquois Brewing Co.*, 173 N. Y. 303, 310. There the court said:

> "In the construction of written contracts it is the duty of the court, as near as may be, to place itself in the situation of the parties, and from a consideration of the surrounding circumstances, the occasion and apparent object of the parties, to determine the meaning and intent of the language employed. Indeed, the great object, and practically the only foundation of rules for the construction of contracts, is to arrive at the intention of the parties. This is a most conspicuous and far-reaching rule, and involves the nature of the instrument, the condition of the parties, and the objects which they have in view, and when the intent is thus ascertained it is to be effectuated unless forbidden by law."

Gillett v. Bank of America, 160 N. Y. 549, 555, 556. *Schoonmaker v. Hoyt*, 148 N. Y. 425, 431. Applying the rule stated in the cases cited to this case, it is clear the intent of the city, in *section* 17 of the contract of December 3, 1852, was that the

property that would be brought into existence by its performance should be exempt from taxation upon any amount in excess of the then capital stock of the new company. The wording of that section plainly indicates that intent. If it had been assumed it had the power to so exempt that property there would have been no occasion for resort to the legislature. As it did not have that power, all it could do was to agree to join in an application to the legislature that the property should be so exempted. That agreement was consistent with an intent on the part of the city that the new property should be exempted as and to the extent stated in that section; it was inconsistent with any other or different intent. It agreed in the same section if such law was not passed it would refund the city taxes the Union Company was required to pay on any amount in excess of the one limited. It is true that did not include the county taxes of the county of Rensselaer manifestly because it had not the power to agree to refund such taxes, but that does not in any way or to any extent affect the intent of the city in the contract of December, 1852. Such intent clearly and plainly was that this new property should be exempt from taxation except on the then amount of the capital stock of the company. The contract having been executed by the city with that intent in December, 1852, and the legislature having, by *chapter* 462 *of the laws of* 1853, approved such exemption referring therein specifically to that part of the contract containing it, such approval related back to the date of the contract and the exemption became and was a right of the Union Company from such date. As that contract contained the details previously agreed upon it will be seen the right to the exemption in fact antedated that instrument.

(*d*) It is plain from the facts and the sequence of the things done, the city and the railroad companies agreed upon the improvement to be made, how it was to be made, and the obligations and rights of the parties thereto and therein before the act of 1851 was passed. A single railroad and passenger station were to be constructed to take the place of the four railroads then existing, in the use of which the owners of those roads were to have equal rights; a new railroad company was to be organized to construct and thereafter maintain such new road and station; the city was to aid therein by granting the right to use its streets therefor, and by issuing its bonds to provide the money required for the work to be done, for the payment of which, principal and interest, it was to be secured by a mortgage to be given by the new company upon its property and guaranty agreements of the four old companies; the former railroad tracks in River street were to be removed and the right to have and maintain them there surrendered; and the property of the new railroad company was to be exempt from taxation upon any amount in excess of its then capital stock, which was $30,000. Following such agreement the things agreed to were done. The act of 1851 was passed which authorized the issue of bonds by the city; the new railroad company was organized with a capital of $30,000; the details of the agreement were put in contract form, and the legislature approved the exemption of the property of the new company from taxation upon any amount in excess f the amount of its capital stock.

Unity of the scheme agreed upon.

When the facts relative to this improvement are

thus grouped together, it is plain the several parts are not to be treated in an isolated way. The acts of 1851 and 1853 are to be read and construed together. The same statement applies to the contract of December 3, 1852, and the act of June, 1853.

Things done in reliance upon the exemption.

When the city of Troy in January, 1853, issued $500,000 of its bonds and thereafter sold them, and from time to time as money was required in the prosecution of the work, paid over their proceeds to the Union Company, it did so in reliance upon performance by that company of its obligation. When the Union Company acquired the land needed for its road and station and let the contracts for their construction, it did so in reliance upon performance by the city of its obligations and upon the approval by the legislature of the exemption of its property from taxation as and to the extent the city intended and agreed it should be.

Time of performance.

It appears in the record, *pp.* 201, 202, $500,000 of the bonds were issued in January, 1853, but it does not appear that any of their proceeds was paid over to the Union Company prior to June 24, 1853, when the exemption act was passed. The remaining $207,000 of bonds were issued after that date, $125,000 January 1, 1854; $30,000 March 27, 1854; $25,000 May 23, 1854, and $27,000 October 1, 1854. (*P.* 202, *Id.*)

The contract for the construction of the new railroad was approved by the Union Company

February 28, 1853. (*P.* 142, *Record.*) Those for the erection of the passenger station were approved by that company May 9, 1853. (*P.* 143, *Id.*) The contract for the construction of bridges over the new railroad to carry certain streets was approved July 13, 1853. (*P.* 144, *Id.*) When work was commenced under those contracts does not appear. It does appear, however, that they were all completed by the end of the year 1854, as the new railroad and station were opened for use January 1, 1855.

Error as to effect of what was done.

(*c*) The court below erred in its conclusion that because the parties to the contract of December 3, 1852, entered upon its performance before the exempting act of June 24, 1853, was passed such exemption was not an element of such contract but was a gratuitous privilege granted by the State which it might take away at will. It is not necessary to consider or determine what might have been the rights and obligations of the parties if the exemption act had not been passed, for it was passed at a very early stage in the performance of the contract. When passed it was a fulfillment of the promise of the city in *section* 17 of the contract of December, 1852. That agreement was an inducement for the Union Company and the other railroad companies to agree to undertake the improvement the city bargained for. When the exemption act was passed it necessarily related back to the date of the contract, and made the promise of exemption valid from that date. It was a consideration for performance by the Union Company and the other railroad companies of their agreement to construct the new road and sta-

tion and surrender their rights in River street, promissory in character until that act was passed but then fully performed. Nor is it necessary to consider and determine what the effect would have been if the new railroad and station had been completed before that act was passed for it is clear the larger part of the expenditures in completing the work was made after its passage. They were so made in reliance thereon. All that was done prior to its passage was in reliance upon its passage in the future. The contract obligation of the State in the matter to which its act applied does not depend on the order in which the things agreed upon were done, but on what was agreed to be done, and, after this act was passed, was in large part, if not entirely done. It is plain from these facts, as well as from the unity of the scheme, the agreement to make the improvement and the expenditure of the necessary amount of money to complete it were in reliance upon the exemption of the new property from taxation to the extent appearing in the formal contract of December 3, 1852, and in the act of June 24, 1853. Such new property would not in any event become the subject of taxation until the railroad and station were completed, which necessarily would be, and was, long after the act of June, 1853, was passed. When they were completed the exemption contracted for and approved by the legislature was earned by full performance of the contract. It was not earned until then for the things agreed to be done were not severable, they were all required for complete performance.

It is, therefore, of no material consequence that the city and the Union Company entered upon the performance of the contract before the exemption act was passed. It was the intent of the city that

the new property should be exempted. The agreements of the Union Company and the other companies were, in part at least, if not entirely, based on such exemption. Such intent of the city and such reliance of the Union Company and the other companies on the exemption existed prior to their entry upon performance of the contract. It required a year and seven months after the exemption act was passed before the new road and station were completed.

Taking the facts relative to this improvement, and the contract therefor, as they appear in the record, can it be said if the city and the Union Company had waited until the exemption act was passed before they entered upon the performance of the contract, that act would then have been a part of the contract and so protected by the contract clause of the constitution, but because they entered upon the preparatory stages of performance before the exemption act was passed, it is not so protected? Such a conclusion would be an evasion rather than an application of that clause of the constitution for it would give effect to the shadowy and reject the substantial parts of the performance of the contract. In *New Orleans Gas Company v. Louisiana Light Co.*, 115 U. S. 650, previously cited, this court said (*pp.* 664, 665):

> "We particularly refer to those (cases) in which it is held that an exemption from taxation, for a valuable consideration at the time advanced, or for services to be thereafter performed, constitutes a contract within the meaning of the constitution." (Citing authorities.)

In *Home of the Friendless v. Rouse*, 8 Wallace, 430, this court said, *p.* 437:

> "It is true that legislative contracts are to be construed most favorably to the state if on

> a fair consideration to be given to the charter, any reasonable doubts arise as to their proper interpretation; but, as every contract is to be construed to accomplish the intention of the parties to it, if there is no ambiguity about it, and this intention clearly appears upon reading the instrument, it is as much the duty of the court to uphold and sustain it, as if it were a contract between private persons."

Here no valuable consideration for this exemption was presently paid, but there was an agreement to render services in the future which were rendered in small part before, and in large part after, the exemption act was passed.

Effect of part performance before passage of exempting act.

It was said by the court below, as the Union Company had acquired property and let contracts for constructing the railroad and station and the city had issued some of its bonds before the exempting act was passed, they were bound by the contract and could have been required to complete its performance if that act had not been passed. If that be assumed to be true the conclusion that the exemption act was a gratuity does not follow. It is undoubtedly the fact the State was at liberty to pass it or to refuse to do so. If it had refused and the Union Company had gone forward expending its money in the construction of its railroad and station, there would have been opportunity to hold and decide such expenditures were not made in reliance upon a legislative exemption of its property from taxation. The cases in which exemption of property from taxation have been sustained have not been rested upon an obligation of the State to

legislate as it did, but on the things done by the corporation in reliance upon the exemption. The legislature did not, however, refuse but passed the exemption act which made the intent of the city in its agreement with the other parties to the contract effectual. It did that at the request of the city and with knowledge of its intent and purposes. The conclusion must therefore be, the expenditures of the Union Company in constructing its railroad and station constituted an acceptance of the promised exemption and were made in reliance thereon.

If in the act of 1851 the legislature had, in addition to the power to issue bonds for this purpose, conferred upon the city authority to so exempt the property of the new railroad company from taxation upon any amount in excess of its capital stock, and the city thereafter formally agreed to so exempt it, would there be any doubt such exemption would have been a part of the contract? How does that differ in legal effect from what was done? The exemption was an integral and inseparable part of the agreement for the improvement the city desired and bargained for which preceded the act of 1851. The legal effect of the things done in performing such agreement must be determined by considering the object the parties sought to accomplish and the means they adopted to secure that result as a whole, not by considering the various steps in the way of performance as separate and disconnected acts. The error in the reasoning of the court below was in failing to give effect to the unity of the scheme the parties agreed upon before anything was done towards or in the way of its accomplishment.

When considered as a whole, and effect is given to the things done as parts of that whole, it is clear

the Union Company was January 1, 1855, when its road and station were completed and opened for use, entitled to the exemption of its property from taxation to the extent provided for in the contract of 1852 and in the act of 1853, because it had then earned such exemption by the full performance of its contract. It was not a gratuity granted by the State, but a contract property right which could not be taken away by any subsequent act of the legislature.

SECOND.

The reformed contract of July 1, 1858, was not a waiver by the Troy Union Railroad Company of its right to the exemption of its property from taxation as and to the extent it was so exempted by chapter 462 of the laws of 1853, nor did it therein or thereby consent that it might be taken away by any subsequent legislative act.

Situation prior to contract of 1858.

1. Previous discussion has been directed to the establishment of the contract right of the Union Company to the exemption of its property from taxation January 1, 1855, when its road and station were completed and opened for use. As the contract of 1852 was to some extent changed by the contract of 1858, which was after its execution the contract regulating and governing the obligations and rights of the parties, it is needful to look into that contract and see to what extent, if at all, it affected the exemption of the property of the Union Company from taxation.

Occasion for reformation of the contract.

2. The default of the Union Company in paying the interest on the bonds of the city of Troy issued under the act of 1851 to provide the money required for the construction of its road and station, resulted from the failure of the plan contained in the contract of 1852 for securing the money with which to make such payments. Such plan was by way of tolls to be paid by the operating companies which were therein fixed. *Sections* 7, 8, 9, 10, *pp.* 82, 83, 84, *Record.* As such tolls were based on the movement of engines and cars, the operating companies found it to their interest to reduce rather than increase the number of such movements, thus reducing the amount of bills against them for such tolls. None of the provisions of that contract gave the Union Company any right to resort to a summary proceeding to collect its bills for tolls from the operating companies. *Report of Committee, October* 7, 1858, *pp.* 224, 225, 226, 227, 228, *Record.* The result of such default was the commencement by the city in 1857 of an action to foreclose its mortgage. The committee referred to above was appointed for the purpose of effecting a settlement of such action with the Union Company and the operating companies. The contract of 1858 was the result of that settlement. There is nothing in the record indicating that the contract of 1852 failed in any other respect. The correction of that feature was therefore the material occasion or reason for reforming the contract of 1852.

Comparison of the two contracts.

3. When the provisions of the reformed contract of 1858 are compared with those of the one of 1852, it will be seen the material change effected by it was in changing the payments to be made by the operating companies from tolls on cars and engines moved to equal monthly assessments upon them, and in conferring upon the Union Company power to enforce payment of such assessments by excluding a defaulting operating company from the use of its railroad and station until payment was made. (*Sections Third and Fourth, p.* 93, *Record.*) In the settlement which resulted in that contract the operating companies were not all willing to assume an equal part of the original debt and the interest that was in default. The New York Central and Hudson River Companies each assumed one-quarter of the original debt and interest. The Rensselaer and Saratoga Company assumed $125,000, and the Troy & Boston $100,000. (*Committee report, p.* 226, *Record.*) To meet that situation it was provided in *Section Eight* of the new contract, that upon a foreclosure of the mortgage and sale of the property the proceeds should be applied ratably in proportion to the amount of the original debt assumed by each company, and the balance remaining, if any, should go to the operating companies so that each would receive its ratable share. (*Pp.* 94, 95, *Record.*) Because of the unequal assumption of the original debt by the operating companies it was provided in the *Seventh Section* of the new contract the ownership of the operating companies in the property of the Union Company should be, New York Central and Hudson River Companies each one-fourth, Rensselaer and Saratoga, and Troy & Boston Companies, each one-fifth. (*P.* 94, *Record.*)

In that respect a change was made from the equality provided for in *Section* 21 of the old contract (*p.* 86, *Record*), manifestly because of the inequality of their undertakings as to the original debt. None of these changes affected or modified the matter of the exemption of the property of the Union Company from taxation.

Exemption section of new contract.

4. As the new contract was to take the place of the old one, the exemption provision of the latter *Section* 17 (*p.* 85, *Record*), was reproduced by *Section Eleventh* of the former (*p.* 96, *Id.*), as follows:

> "Eleventh: The party of the first part (City of Troy) agrees that if the law passed by the legislature of the State of New York June 24, 1853, relative to the taxation of the property of the Troy Union Railroad Company in Troy, shall, at any time, be repealed, the common council of the city of Troy shall join in an application to the legislature of the State of New York, that the Troy Union Railroad Company be exempt from taxation upon an amount exceeding the present amount of its capital stock * * * and if such law shall not be passed, the common council of the city of Troy shall refund to the Troy Union Railroad Company an amount equal to the city taxes imposed upon the Troy Union Railroad Company, for any valuation exceeding its present capital stock."

As this is the only section of the new contract which deals with or refers to the exemption, it is needful to clearly understand its meaning and application to the condition then existing. Exemption of the property of the Union Company from taxa-

tion had been agreed to by the city, such exemption had been approved by the legislature, and the Union Company had, January 1, 1855, fully performed the contract of which such exemption was a material consideration. It was then a contract property right of that company, of which it could not be deprived without its consent. That was the situation when the contract of 1858 was negotiated, agreed upon and executed.

Intent, how ascertained.

5. It is an accepted rule in the construction of contracts or contract provisions, the intent of the parties is to govern and control. That is to be sought for, and when ascertained is to be applied. The things to which resort may be had for that purpose have been so clearly defined there is no room for doubt.

Language used.

(*a*) The intent of the parties is to be ascertained in the first place from the language used. If the words are plain and free from ambiguity they are, in the absence of something showing a different sense, to have their ordinary meaning. *Dwight v. Germania L. Ins. Co.*, 103 N. Y. 341, 346, 347, 348; *Gans v. Aetna Life Ins. Co.*, 214 N. Y. 326, 330.

Object and surroundings.

(*b*) If there is doubt or uncertainty from the language used, reference may be had to the circumstances connected with and surrounding the making and execution of the instrument and the object the parties had in view. *Maloney v. Iroquois Brewing Co.*, 173 N. Y.

303, 310; *Gillett v. Bank of America*, 160 N. Y. 549, 555, 556; *Schoonmaker v. Hoyt*, 148 N. Y. 425, 431.

Acts of the parties.

(*c*) Again, if there is doubt as to the intent, the conduct of the parties under a contract, long continued, becomes and is a practical construction of it, for it is the best evidence of what the parties intended. *Nicoll v. Sands*, 131 N. Y. 19, 24; *Woolsey v. Funke*, 121 N. Y. 89, 92; *Ins. Co. v. Dutcher*, 92 U. S. 269, 273; *Carthage, etc., v. Village of Carthage*, 200 N. Y. 1, 14.

No intent to waive the exemption.

6. Applying the foregoing rules to the construction of the provision of the new contract which related to the exemption of the property of the Union Company from taxation, it is clear there was no intent of either of the parties to eliminate then, or in the future, such exemption as had resulted from full performance of the old contract and then existed.

Not indicated by the language used.

(*a*) The language of the *Eleventh Section* of the new contract, previously quoted, is plain and clear. It creates no doubt and produces no uncertainty. In that section the city of Troy agreed, as explicitly as it did in *Section* 17 of the old contract, the property of the Union Company should be exempt from taxation as therein limited. If the exemption statute of 1853 should be repealed it would join in an application to the legislature that it be restored by a like statute, and if it was not so restored it would refund

the city taxes paid on such valuation as might be in excess of the $30,000 limitation. The language used was identical with that contained in the old *Section* 17, except so much of it as related to a possible repeal of the act of 1853. The effect of that part of it will be considered later. It is certain, however, it indicated no intent on the part of the city to withdraw its previous agreement that such property should be exempt from taxation, for in that contingency it agreed, as plainly as words can express, to seek the aid of the legislature to have the exemption continued. It intended in the contract of 1852 the property of the Union Company should be exempted as and to the extent stated therein, and it equally intended in the contract of 1858 such exemption, then existing, should be continued.

Occasion for a change in the contract.

(*b*) The occasion for making a change in the contract of 1852, the object the parties had in view in making the changes that appear in the contract of 1858, and the circumstances surrounding the preparation and execution of the contract of 1858, support and lead to the same conclusion. The occasion for a change was the failure of the old plan for obtaining the money the Union Company required to meet its obligations to the city in connection with the city bonds issued under the act of 1851. It had no connection with or bearing upon the exemption provision of the old contract. The Union Company was in default in its undertaking with the city. It was not so in default because its property was exempt from taxation, but because the operating companies evaded payment of tolls for the use of its road and station, and no summary

method of enforcing payment was provided in the old contract. As a default had occurred and a foreclosure of the mortgage was pending, the city deemed it for its interest that the operating companies should directly assume their proportionate parts of the original debt and the interest then in default. As two of the operating companies were not willing to assume their full proportionate parts and the city would thereby sustain a loss, a change in the proportionate ultimate ownership of the property of the Union Company was required. The new provisions in the contract of 1858 were to meet and deal with the situation then presented. No reason or occasion for any change in the exemption provision in the old contract and in the statute of 1853 appears. From the report of the committee that effected the settlement and prepared the contract of 1858, it is plain no change as to the exemption then existing was contemplated. (*Pp.* 225, 226, 227, 228, *Record.*)

It is to be noted in this connection the Special Term found on the request of the Union Company the contract of July 1, 1858, did not take away, impair, or affect the contract rights of the parties thereto then existing which had become and were at that time fixed and established by performance of the things required by the contract of 1852. (*P.* 286, *Record.*) Such finding may not be controlling, but it is of significance in giving effect to the contract of 1858.

Acts of the parties.

(*c*) Following the execution of the contract of 1858 to 1886, a period of twenty-eight years, the city of Troy assessed the property of the Union Company each year $30,000, which was under and in accordance with

the exemption contained in the contract of 1852 and the act of 1853. It had been so assessed from January 1, 1855 to 1858, and no change was made or attempted to be made in it from 1858 to 1886. In 1886 and 1887 the city made an attempt to increase the assessment to $783,984 in each year. The Union Company protested against those assessments and insisted they should be reduced to $30,000. They were reviewed on writs of certiorari issued on the application of that company. In those proceedings the contract of 1858 and the contract of 1852 were introduced in evidence. The contention of the city in support of those assessments was the act of 1853 was not valid and the contract of the city for the limitation of the assessment of the property of the Union Company was *ultra vires* and therefore not enforceable. No claim had been made by the city prior to 1886 that the contract of 1858 had in any respect changed the exemption provided for in the contract of 1852 and the act of 1853. Nor was any such claim made by it in the proceedings to review the assessments of 1886 and 1887. The contention of the Union Company in those proceedings was the exemption in the contract of 1852 and act of 1853 continued as a contract property right after the contract of 1858 was executed. The city, by its silence with reference to that contention, apparently acquiesced therein. Its requests to find in those proceedings contained nothing in the way of a denial of such claim of that company. (*Pp.* 71, 72, 73, *Record.*) The decision of the Special Term therein, which was affirmed by the General Term and the Court of Appeals, was that the exemption was valid and the assessments were thereupon reduced to $30,000 for each year, and that contined until 1907. Then the city at-

tempted to increase it to $1,000,000 on the ground that the contract of 1858 (*Section Seventh, p. 94, Record*), had transferred the title of the property of the Troy Union Railroad Company from that company to the operating companies, and thereby the right to the exemption had been lost. The effect of that section of the contract of 1858 in that respect will be considered later. It is sufficient to say here the acts of both parties under it for a period of thirty-nine years negative the view that it was the intent of the Union Company to therein and thereby surrender its right to the exemption of its property from taxation as and to the extent it was exempted under the contract of 1852 and the act of 1853, or that it was the intent of the city to exact and require such surrender. Such acts were plainly and clearly consistent with the view that it was the intent of the parties in the contract of 1858 that the exemption provided for and secured in the earlier contract and statute should be continued in the future.

As it appears from the language used in the contract of 1858, from the occasion for a change in the old contract and the object the parties had in view in the changes made and from the acts of the parties under the changed contract, there was no intent of the parties to surrender or waive the exemption of the property from taxation provided for in the contract of 1852 and in the act of 1853, and secured by the performance of that contract, the conclusion must necessarily be the right to such exemption was not thereby surrendered by the Union Company, nor was the agreement of the city that the property of that company should be so exempted thereby changed or modified.

Effect of section 11 of contract of 1858.

7. The contention that *Section* 11 of the contract of 1858 was in legal effect an agreement that the exemption act of 1853 might be repealed and the exemption thereby taken away is not well founded. It has already been pointed out the intent of the parties ascertained by recognized and accepted rules in the construction of contracts was that the exemption feature of the contract of 1852 and the statute of 1853 should not be changed. To meet that conclusion the wording of *Section* 11 is relied upon.

Repeal of act of 1853 not contemplated by the parties.

(*a*) It is argued from the words: "that if the law (act of 1853) shall at any time be repealed," the parties recognized the repealability of that act, hence its repeal in 1909 was within that recognition, and the Union Company cannot now assert its invalidity. They have no such meaning or effect. There is a clear distinction between the form and validity of a repealing act. The question is as to the sense in which the words were used, or, in other words, as to the intent of the parties in their use. The entire sentence in which these words appear must be read with them, and when it is, there is no room for doubt that the exemption then existing should continue for an unlimited future. In the event of a repeal of the exemption act of 1853, the city agreed it would join in an application to the legislature to restore it. If a law restoring it was not passed, it agreed to refund to the Union Company the city taxes it was required to pay on any amount in excess of $30,000. These are plain words.

They meant that the exemption then existing under the contract of 1852 and the act of 1853 should continue in the future. They cannot be construed to mean anything else. It is plain from the remainder of the sentence the words quoted above meant a valid repeal of the act of 1853. The parties meant that the Union Company should continue to have the benefit of the exemption. The city so understood it for its agreement was the same as that contained in the contract of 1852. The Union Company for the same reason clearly had the same understanding. It was not and could not have been contemplated then by either party that at some future time the city would apply to the legislature to have the act of 1853 repealed.

When the city did so apply in 1909 its act was in plain violation of its agreement in 1858 and in 1852 as well. The repealing act of 1909 cannot be sustained on the ground that the Union Company, in *Section* 11 of the contract of 1858, waived the exemption of its property from taxation and consented that the act of 1853, which ratified and approved it, might be repealed. The company cannot be precluded from asserting the invalidity of the repealing act of 1909 by anything appearing in that section.

Contention as to power of the city.

(*b*) It is argued in behalf of the defendants in error the agreement of the city in *Section* 11 of the contract of 1858 was *ultra vires,* something that was beyond its power and therefore could not be enforced against it. This argument is not supported by the facts, nor is it in accordance with the law applicable thereto.

First: The facts do not support this contention of the defendants in error. The State, by the act of 1853, approved the exemption of the property of the Union Company from taxation which the city in the contract of 1852 agreed it would have approved by the legislature. That was in effect a delegation to the city of power to exempt the property of the Union Company from taxation in excess of $30,000 in future assessments. It was just as effectual after the city had agreed thereto as it would have been if the act had preceded the agreement. It will be observed the agreement contained in the contract of 1852 was identical in that respect with the one in the contract of 1858. The former having been ratified and approved by the legislature by the act of 1853, the city had power to continue it when that contract was reformed in 1858, and when it did so its agreement then was one by which the city was legally bound. That this is so clearly appears from the following quotation from the act of 1853:

Not ultra vires in fact.

> "The property of the Troy Union Railroad Company shall be estimated and assessed (as the common council of said city of Troy, by its contract with said company, dated December third, eighteen hundred and fifty-two, agreed the same should be.)"

In the reformed contract the same agreement on that subject appears, if not in identical terms, certainly in legal effect. The city of Troy did not in that contract agree to anything new as to the exemption of the property of the Union Company from taxation, but it did carry forward and incorporate in the reformed contract the previous agreement.

That carried with it and continued for the future the legislative approval contained in the act of 1853. All of the matters referred to related to the future assessments of the property of the Union Company and are to be applied to such assessments. The act of 1853 was passed prior to any assessment of this property as the railroad and station were not completed until January 1, 1855. As the exemption of it from taxation by the city was approved by the legislature prior to that time and such approval related to the future, it was a continuing grant of power to the city and its subsequent agremeent to continue the exemption was clearly within its power. Such action on its part required no legislative approval. It has been previously pointed out the exemption provision of the contract of 1852 which was approved by the act of 1853 had, prior to the contract of 1858, by performance of the earlier contract, become a vested property right of the Union Company which was beyond the power of the city or State, or both combined, to take away. Such right having become so vested with the assent and approval of the legislature, the city of Troy had ample power in the contract of 1858 to continue such exemption without resorting to the legislature. The alternative provision in *Section* 11 of the contract of 1858, relating to the refunding of taxes, which was identical with that contained in *Section* 17 of the contract of 1852, will be considered later, so far as may be necessary in this case.

It is clear the facts fail to establish that the agreement of the city in that section was beyond its power.

Second: Under the facts in this case the claim of *ultra vires* is not in any event available to the city of Troy to enable it to evade its obligations with reference to the exemption of the property of the Union Company from taxation upon any amount in excess of $30,000, the amount limited in the contract of 1852, and in the act of 1853, and contained in the contract of 1858.

Performance forbids claim of ultra vires.

The contract of 1852, containing the agreement of the city for such exemption which the legislature approved and ratified by the act of 1853, was fully performed by the Union Company not later than January 1, 1855. The city of Troy received and enjoyed, and still has and enjoys, all of the benefits and advantages it sought and bargained for in that contract. It is settled by abundant authorities that a corporation, business or municipal, cannot avail itself of the claim of *ultra vires* to evade or excuse non-performance of its contract obligation where the contract containing such obligation has been performed by the other party or parties thereto and it has received and retained the full benefit and advantage of such performance.

In *Whitney Arms Co. v. Barlow*, 63 N. Y. 62, 70, it was said:

> "It is now very well settled that a corporation cannot avail itself of the defense of *ultra vires* when the contract has been, in good faith, fully performed by the other party, and the corporation has had the full benefit of the performance, and of the contract. * * * If the other party has had the benefit of a contract fully performed by the corporation, he will not be heard to object that the contract and performance were not within the legitimate powers of the corporation."

In *Seymour v. S. F. C. Assn.*, 144 N. Y. 333, 341, it was said:

> "The kind of plunder which holds on to the property, but pleads the doctrine of *ultra vires* against the obligation to pay for it, has no recognition or support in the law of this state."

In *Vought v. Eastern B. & L. Assn.*, 172 N. Y. 508, 518, it was said:

> "It may be that while a contract remains unexecuted upon both sides, a corporation is not estopped to say in its defense that it had not the power to make the contract sought to be enforced, yet when it becomes executed by the other party, it is estopped from asserting its own wrong and cannot be excused from payment upon the plea that the contract was beyond its power."

To the same effect are *Linkhauf v. Lombard*, 137 N. Y. 417, 423, *and Bath Gas Light Co. v. Claffy*, 151 N. Y. 24, 37.

The facts in this case clearly bring it within the rule of these cases. The improvement which was the subject-matter of the contract was made and since January 1, 1855, the city has received the full benefit it expected to receive when it executed the contract of 1852. The railroad companies having their terminals in the city of Troy and the Union Company became parties to the agreement for the improvement the city wished them to make in reliance upon the exemption provision of the contract. It may well be there were other considerations, but if so, it is plain this was a material consideration and it cannot be said the agreement to make the improvement would have been entered into or that it would have been performed in its absence. The parties so acting in reliance upon the exemption can-

not be restored to their former position and rights. If that were possible, the city would not permit it. If in any case a party to a contract is estopped from availing itself of the claim of *ultra vires* this is manifestly one where such estoppel should be applied. The law equally with the facts is against this contention of the defendants in error.

Alternative provision as to refund of taxes.

Third: Section 11 of the contract of 1858, equally with *Section* 17 of the contract of 1852, contained an alternative provision which was to the effect that if the law it agreed to apply to the legislature for was not passed it would refund to the Union Company the city taxes upon any amount in excess of $30,000. It may fairly be assumed the claim of *ultra vires* relates more to this provision than to the other part of the section. If so, the preceding discussion of this feature reveals the unsoundness of that contention as to that part of the later and earlier contract as well. The agreement to refund the city taxes was equivalent to one to exempt the property to that extent from taxation. The amount of the exemption was the same $30,000. The only respect in which it differed from the act of 1853 was as to the county taxes of the county of Rensselaer upon an assessment in excess of $30,000. The agreement to refund the city taxes was equally with the agreement for exemption a consideration for performance of the contract. That having been performed and the city having received and retained all the benefits resulting from such performance, it can no more avail itself of the claim of *ultra vires* as to this part of the contract than it could as to any other part of it. This question, however, is not

here. The court below, in its opinion, *p.* 326, *Record,* said:

> "We do not in any way pass upon the question, under the contract of 1858, of the liability of the city of Troy to refund to the Troy Union Railroad Company an amount equal to the city taxes imposed upon the Troy Union Railroad Company for any valuation exceeding $30,000."

Its decision was the repealing act of 1909, was valid and therefore the assessment complained of was not an invalid one. Its decision in that respect was not aided by any effect resulting from the alternative provision as to a refund of city taxes that might under the contingency expressed in that section of the contract be paid in the future. If the court below had held that the repealing act of 1909 might be upheld on the ground that the Union Company had an alternative remedy against the city for taxes, it was required to pay on an amount of assessment that exceeded $30,000, the value of that remedy would have been a material matter of discussion here, but as it expressly withheld it from its decision it is not now available for any purpose except that of emphasizing the intent of the city in the contract of 1858 equally with the one of 1852, that the property of the Union Company should be exempt from taxation.

Result of the foregoing discussion.

8. The result of the foregoing discussion as to the effect to be given to the contract of 1858 plainly supports the contention of the plaintiff in error that it did not change or modify the contract of 1852 as to the exemption of the property of the Union Company from taxation or the approval of that fea-

ture of that contract by the legislature in the act of 1853. With the completion of the new railroad and station January 1, 1855, the Union Company had earned and was thereafter entitled to the exemption of its property from taxation upon any amount in excess of $30,000. Such right had then become fixed and established by the full performance of its contract with the city. It was from that time forward a contract property right which could not thereafter be abridged or taken away except with its assent. Nothing contained in the contract of 1858 or in its acts subsequent to the execution of that contract indicates any intent on its part to waive or surrender that right or any intent on the part of the city to exact its waiver or surrender. It is true the contract of 1852 was by the one of 1858 annulled, but that did not and could not affect a right that had become fixed and established. The new contract was to be and no doubt was the guide for the action of the parties in the future, but such future action was to be in recognition of the things already done and the right or rights thereby acquired. The validity of the repealing act of 1909 cannot be sustained or upheld upon the ground that the contract of 1858 effected a surrender or waiver of the right of the Troy Union Railroad Company to the exemption of its property from taxation contracted for in 1852, and approved by the legislature in 1853, which had become a vested property right January 1, 1855, when its performance of the contract of 1852 was completed.

THIRD.

The contract of 1858 did not in terms or legal effect transfer the title of the new railroad, station and other property of the Troy Union Railroad Company, either wholly or in part, from that company to the operating companies therein named. The judgment here for review cannot be sustained on that ground, nor can the question as to the validity of the repealing act be thereby evaded.

Contention of defendants in error.

1. The argument of the defendants in error is based on *Section Seventh* of the contract of 1858, which is here quoted. (*P.* 94, *Record.*)

> "Seventh: The New York Central Railroad Company, and Hudson River Railroad Company, shall each own one-fourth part, and the Rensselaer and Saratoga Railroad Company, and the Troy and Boston Railroad Company, shall each own one-fifth part of the railroad, passenger house, and all other property, rights and franchises of the Troy Union Railroad Company, subject to the lien of the mortgage thereon to the city of Troy."

Their contention is that section of the contract transferred the title to nine-tenths of the property referred to therein to the four companies therein named; that the exemption of that property from taxation while the title thereto was in the Troy Union Railroad Company did not follow the title when transferred to the operating companies named; that the assessment complained of was therefore a valid assessment and that it was immaterial whether the repealing act of 1909 was valid or invalid for its invalidity could not affect the validity of the assessment made in 1911.

Such contention makes it necessary to ascertain whether or not the above quoted section of the contract of 1858 did have such effect as to the title of the property assessed. It may me, if the title was so transferred, the assessment could be sustained if the act of 1853 was not repealed. It is plain, however, if the title was not so transferred the assessment was invalid under the act of 1853, unless it was repealed by a valid repealing act.

Title was vested in Troy Union Company.

2. It is an established fact that the Troy Union Railroad Company obtained from the city of Troy its assent to the occupation of streets in the city by that company with its railroad and station, that it purchased and took the title to all the land required for its road and station outside the streets occupied therewith, that it contracted and paid for the construction of the proposed new railroad and passenger station, and that following such construction it maintained and kept in condition for use the property it had so brought into existence.

The findings of the Special Term were in accordance with the foregoing statement. *Finding* 5, *p.* 240, *Record; Finding* 11, *p.* 242, *Id.* It was also found by the Special Term, *finding* 14, *p.* 242, no other contract or instrument relative to the property of the Union Company or the title thereto was executed subsequent to the contract of 1858, and that the parties thereto did not thereafter act or assume to act under any other contract. It was also found by the Special Term, *p.* 245, *Record,* the contract of July 1, 1858, was not in form or legal effect a deed or instrument conveying the title of the property of the Union Company, or any part of it, to the operating companies named and they did not

thereby acquire a title in fee thereto. Three facts are therefore established: (1) The title to the property was at the time the contract of 1858 was executed vested in the Troy Union Railroad Company. (2) That contract was not in form or legal effect a deed whereby the title to the property was conveyed. (3) No other instrument relative to the title to the property was executed after the contract of July 1, 1858. From these facts the conclusion necessarily follows that a transfer of title must be found in that contract if it was in fact transferred to the operating companies.

Intent of the parties to contract of 1858.

3. The intent of the parties to that contract is to be ascertained and given effect. The court cannot make a contract by which parties are to be bound, it can only construe and give effect to the contract they intended to and therefore did make. Such intent is to be learned from the language used in the entire contract, from the occasion for it as that may be gathered from the facts and circumstances preceding, attending and surrounding its execution, and from the conduct of the parties under it, which constitutes a practical construction of it by them. Authorities supporting the foregoing statement have been previously cited. They need not be repeated here, nor is there need for citing other authorities for that purpose.

Language used in the contract.

First. The language used in the contract. For this purpose all parts of it are to be examined for the meaning of a particular part of it is to be ascertained from all that is contained in the four corners of the instrument.

(*a*) The preamble recited the organization of the Troy Union Railroad Company pursuant to the act of 1851, its construction of a railroad through a portion of the city of Troy, and the then pending foreclosure action.

In *Section* 1 the city, party of the first part, thereby agreed "that the Troy Union Railroad Company may continue, maintain and operate their railroad in the city of Troy as now located and constructed." (*Pp.* 92, 93, *Record.*)

In *Section* 2 the city agreed that the Union Company might continue as before to occupy the land along each side of Sixth street for its passenger station. (*P.* 93, *Id.*) In those sections it is clear the city did not understand the contract it was then entering into, to take the place of the one of 1852, made or produced any change in the ownership of the railroad and station which it is conceded was then vested in the Union Company.

In *Sections* 3 *and* 4, *p.* 93, *Id.*, it was provided the Union Company should raise the money needed to pay its obligations and expenses by monthly assessments made by it upon the operating companies, of which assessments each of the operating companies agreed to pay one-fourth. The expenses therein mentioned were for the maintenance of the road, gatemen at crossings, and whatever was required to keep the road and station in proper condition for use. (*Sections* 10 *and* 16, *pp.* 96, 97, *Id.*) In the contract of 1852, the money for the same purposes was to be obtained by the Union Company from tolls levied by it upon the operating companies for their use of the road and station. (*Pp.* 82, 83, *Id.*) The change in the contract of 1858 related to the manner of raising the money not in the party that was to collect and receive, or the one that was to pay. The Union Company was thereafter as be-

fore to obtain the money needed to maintain the road and station and pay its obligations and was to use it for those purposes, and the operating companies were thereafter as before to pay what was required, by way of assessments rather than tolls. This was a material part of the change the city regarded as necessary, as will be seen from the report of the committee that negotiated the contract of 1858 with the Union Company and the operating companies. (*Pp.* 225, 226, 227, *Id.*) To enable the Union Company to collect the monthly assessments it was authorized to make, it was provided in *Section* 4, *p.* 93, *Id.*: "That if any of said companies make a default in the payment of any assessment * * * for the space of thirty days, the Troy Union Railroad Company, in addition to all other legal remedies, may exclude such defaulting railroad company from all uses of the Troy Union Railroad, its tracks, passenger house and other property, until payment thereof." Such exclusion, however, would not relieve a defaulting company from the payment of its assessment during the continuance of that contract. This provision is of great significance in ascertaining the intent of the parties in this contract. If the company so excluding one occupying or using the road and station was the owner of them, the foregoing provision would be a proper and useful one to aid in collecting compensation for such use. If, however, such excluding company was not the owner, it is hardly conceivable that it might exclude the owner from the use of its property. That is possible, but if so plain and clear language is required for such a conclusion.

In *Section* 5, *pp.* 93, 94, *Id.*, it was provided that each of the operating companies named should "have equal rights and privileges in the track, pas-

senger house (separate rooms therein, as now occupied), and other property of the Troy Union Railroad Company * * * without restriction, except such reasonable and uniform rules, regulations and rent charges for offices as the Troy Union Railroad Company may, from time to time, prescribe therefor."

In the same section and in *Section* 6, like equal rights and privileges in the use of the bridge of the Rensselaer and Saratoga Company across the Hudson river was given the operating companies, each agreeing to pay one-fourth of the rent therefor.

In *Section* 8, *p.* 94, it was provided that the then existing mortgage given by the Union Company to the city should continue in full force and effect and that company should thereafter at the request of the city execute and deliver to it a further mortgage upon its capital stock, franchises and property for an amount not exceeding the whole amount owing by the several railroads to the city, as further security for the performance by those companies of their agreements executed to the city. Under the contract of 1852 the four railroad companies had executed to the city their several agreements guaranteeing, to the extent of one-fourth each, the obligation of the Union Company to pay the interest on, and principal of, the bonds of the city issued to provide the money for the construction of the railroad and station. (*P.* 82, *Section* 6.) In the settlement of the foreclosure action which resulted in the contract of 1858, the city insisted that the four operating companies should each assume a direct obligation to the city for an equal fourth part of the debt and the interest then in default. Two of the companies, New York Central and Hudson River, did that, but the Rensselaer and Saratoga would only assume $125,000 and the Troy and Boston

only $100,000. *Report of Committee, pp.* 225, 226, 227.

It is very clear from this section the city, as well as the railroad companies, recognized the title to the property as remaining vested in the Union Company. A mortgage executed by that company to the city, after it ceased to be the owner of nine-tenths of the property, would be of little, if any, value as a security. It will be observed this section follows *Section* 7 of the contract on which is based the contention of transfer of title to the operating companies. Manifestly neither the city nor the railroad companies parties to the contract understood that by *Section* 7 the Union Company was divested of its title to nine-tenths of its property, and the conclusion must be they did not so intend. The remaining sections of the contract were substantially reproductions of the sections of the contract of 1852 as to the matters included in them.

Section 9 of the contract of 1858 (*p.* 96) *and Section* 11 of the one of 1852 (*p.* 84) were alike in form. The same statement is true as to *Sections* 10 (*p.* 96) *and* 12 (*p.* 84). In both the obligation to pay the city its expenditures in erecting swing bars at street crossings rested upon the Union Company. Whatever differences appear in the other sections of the two contracts are matters of form rather than substance, and they may be dismissed from consideration here.

Effect of Section Seventh.

(*b*) As the contention of the defendants in error is based upon this section of the contract of 1858, it is needful that specific attention should be given to that section. The argument is it provided that the New York Central and Hudson River Companies "shall each

own one-fourth part, and the Rensselaer and Saratoga and the Troy and Boston Companies shall each own one-fifth part of the railroad, passenger house and all other property, rights and franchises of the Union Company." (*P.* 94.) That was a declaration of present ownership and therefore the title was by that section transferred to them. Such conclusion does not follow from the language used therein.

Comparison with contract of 1852.

(*c*) When it is compared with *Section* 21 of the contract of 1852, which dealt with the same subject, it will be found it accomplished no more in the way of transfer of title than was accomplished by *Section* 21 of the earlier contract. It was there provided (*p.* 86):

> "the stock and property of the Union Company shall belong equally to the four companies named, subject to the mortgage and payment of the bonds."

It is true the description of the property was more in detail in this section of the contract of 1858 than it was in *Section* 21 of the earlier contract, but that is of no consequence for the term *"property"* there used covered all the property the Union Company then had or might thereafter acquire.

In the contract of 1858 the provision was *"shall each own,"* while in the earlier one it was *"shall belong to each."* The meaning is the same for there is no real difference between saying one *"shall own"* a property and it *"shall belong" to him.* The word *"belong"* imparts ownership unless limited by the context. If the parties to the contract of 1858 intended by this section to divest the Union Com-

pany of its title and vest it in the operating companies, it must equally be said they intended by *Section* 21 of the contract of 1852 to vest the title in the same companies. It is plain that cannot be the fact for none of the property had been acquired prior to the execution of the contract of 1852. It was acquired thereafter by the Union Company and all the titles were taken in its name. It was found, and is conceded as a fact, the title to all the property, railroad, station and other property was vested in that company. Its stock did belong to the operating companies under the contract of 1852, and that continued under the contract of 1858, but the tangible property continued from the time of its acquisition to belong to the Union Company.

Effect of the word "shall."

(*d*) It will be observed the phrase in each contract is preceded by the word *"shall."* That imports something in the future, not a declaration of present ownership. Thus regarded, the provisions of each contract are consistent and in harmony with each other. A future contingency was in the minds of the contracting parties. When the contract of 1852 was executed a mortgage to be given by the Union Company to the city to secure it against the interest and principal of its bonds that were to be issued to obtain the money needed for the contemplated improvement was provided for. (*Section* 5, *p.* 82.) Such mortgage was to be upon "its road, buildings, appurtenances, property rights and franchises." The mortgage thus provided for was executed by the Union Company and delivered to the city December 16th and was recorded December 31, 1852. (*P.* 28, *Record.*) The rights mentioned in *Section* 21 were subject to that mortgage. As

the property was not acquired by the Union Company prior to the execution and delivery of such mortgage, it is plain the parties to the contract of 1852 did not intend by *Section* 21 of that contract to vest the title to the property in them, but did intend it should be vested in the Union Company, for it was only in that event the mortgage to the city would be of value as a security. The Union Company failing to perform its obligations, the city commenced an action to foreclose its mortgage. The contract of 1858 was the result of the settlement of that action. In it attention was given to a possible default and foreclosure in the future. In *Section* 8, *pp.* 94, 95, it was provided that in case of a foreclosure of the mortgage the proceeds derived from a sale under a foreclosure decree "shall be applied ratably in proportion to the several amounts assumed of the original debt by each of said railroad companies, so that each * * * be credited on the respective amount of said debt assumed by it, until its respective amount be paid, if sufficient for that purpose, and * * * the balance, if any, of its ratable share shall be paid to it."

It was also provided in the same section, *p.* 95, that in case of default of any of the railroad companies in making payment to the city what it had assumed, by reason of its insolvency, or if judgment therefor should be obtained by the city and execution issued thereon be returned unsatisfied, "the right of such defaulting company to use said Troy Union Railroad Company's tracks and property shall cease, and thereupon its title and interest in said Union Railroad shall vest in the city of Troy." If, however, the defaulting company, or its successor, should at any time during the continuance of the Troy Union Railroad Company assume and pay all liabilities then existing and those thereafter ac-

cruing, such company should be restored to all the rights, ownership and privileges in the Union Railroad existing prior to such default.

In the committee report previously referrerd to (*pp.* 225, 226, 227), to which was attached a draft copy of the contract of 1858, it appears the operating companies would not agree to assume each one-fourth of the original debt. That was $680,000 principal and a substantial amount of accrued interest. The Central and Hudson River Companies each assumed $170,000 of the debt and $30,000 of the interest, which was one-fourth. The Rensselaer and Saratoga assumed only $125,000, and the Troy and Boston $100,000. Neither of them would assume any part of the accrued interest. In *Section* 15, *p.* 97, which related to a new road coming into the city and what it should pay of the original cost, it was provided that two equal fourths of what was received should be applied by the city upon their obligations for the original debt and interest, and that the other two-fourths should be first applied to the part of the original debt not assumed by the Rensselaer and Saratoga and Troy and Boston Companies, then to their respective obligations.

When these provisions are grouped and construed together it is plain the intention of the parties in *Section* 7 of the contract of 1858 was to provide for the rights of the then operating companies and their successors in the road, station, franchises and other property of the Union Company in the future if the Union Company ceased to exist or its property should be sold under the mortgage thereon. In either event, the division, if there was one, was to be on the basis of the assumption of the original debt by the operating companies. The declaration of ownership in *Section* 7, therefore, related to the future contingencies mentioned. Until one event

or the other, or both, happened the ownership of the property was to remain as before in the Union Company. Thus construed, this section is in harmony with all the other provisions of this contract. If construed as a declaration of their present ownership, it is at variance with them and with the purpose and object of the change.

Continuance of the Union Company.

(*e*) The franchise of the Union Company was to be a corporation and do business in a corporate capacity for one hundred years. (*Articles of Association, p.* 24, *Record.*) Its rights were, the occupation and use of streets in the city of Troy, the acquisition and use of property for railroad purposes, and the maintenance of its railroad and station. Its franchise and rights were single and indivisible. If *Section* 7 of the contract of 1858 is construed to mean a declaration of the present, rather than a future, ownership, its effect would necessarily be to destroy the Union Company as a corporation and end its capacity to supervise, maintain and control the use of this property. It is clear no such result was contemplated. What was contemplated and intended was the Union Company should continue as before, the owner of this property with all the rights it previously had and such other rights as were given in the contract of 1858 to supervise and maintain the road and station until it ceased to exist as a corporation, or its property was sold under its mortgage to the city. As that mortgage was paid prior to July 26, 1901, and then discharged of record (*p.* 243, *Record*) the last mentioned contingency cannot occur and there is nothing in the record on which can be based a conclusion that it will cease to be a corporation prior to the expiration of its

corporate existence fixed in its articles of association, hence the time has not yet arrived when in any view it can be said the title of the Union Company to its property has been transferred or lost.

Wording insufficient to transfer title.

(*f*) The declaration in this section *"shall own"* is not sufficient to constitute a transfer of title to the road, station and other property, from the Union Company to the operating companies. It is conceded that when the contract of 1858 was executed the franchises and rights were the property of the Union Company and the title to the road, station and other property was vested in that company. What was incorporated in the section was not sufficient in law to then divest the title of that company and convey to the operating companies named the separate individual interests stated therein. It was adequate and sufficient to fix the rights and interests of the parties named in it when at some future time there might be a division of the property or its proceeds. It is insufficient in its description of the property to constitute a deed conveying present interests therein. That description is "the railroad, passenger house and all other property rights and franchises of the Union Company." What was or would be conveyed under such a description? Assuming it would be sufficient as to the railroad and station, it clearly was not as to the other property stated therein. From this review of the contract of 1858 it is plain from its language the parties to it did not intend by *Section* 7 or by any other section to then transfer the title to the railroad, station and other property from the Union Company to the operating companies. All parts of it clearly negative such intention, and that con-

struction should be controlling unless the facts and circumstances connected with its execution and the acts of the parties under it clearly require a different conclusion.

Attending and surrounding circumstances.

Second. The facts and circumstances surrounding and attending the preparation and execution of that contract with equal clearness demonstrate it was not intended by the parties to operate as a transfer of title to the railroad and other property from the Union Company to the operating companies. This improvement had been provided for in the things agreed to be done prior to 1858. It had been made as contemplated. The railroad and station were constructed and ready for use January 1, 1855, and had been used by the operating companies from that date. The title to the railroad and station and other property acquired in connection therewith was in the Union Company. That company failed to pay the interest on the city bonds and a foreclosure of its mortgage to the city was commenced. Such failure resulted from the inadequacy of the method provided in the contract of 1852 for raising the money needed by the Union Company to pay the interest on such bonds and its other expenses. That required a change in the contract. In no other respect had the contract of 1852 proved inadequate. In that situation the parties negotiated a settlement, the result of which was the contract of 1858. The city wished the railroad and station to continue as they were, but insisted that a change should be made in the way the Union Company was to thereafter obtain the money it needed so that a future default would not occur. Under the contract of 1852 the operating companies were liable to the city as guarantors. The city insisted

they should then assume their equal proportionate part of the original debt so that they would thereafter be directly liable to the city therefor. To such proposed changes the operating companies assented except in one respect. Two of the operating companies would not assume their full proportionate part of the original debt, nor would they assume any part of the then accrued interest. The other two companies agreed to the demand of the city in that respect. For that reason it was agreed by all the parties in the contract of 1858 the ultimate ownership of the property of the Union Company, or of its proceeds should be unequal, fourths as to two and fifths as to the other two. These were the facts surrounding and attending the preparation and execution of the contract of 1858. They have been previously discussed and need no repetition here. The object of the parties was to correct the contract of 1852 in the respect in which its adequacy had failed. Such correction did not in any way involve a change in the ownership of the property. It was known the Union Company owned it and that it was to continue to maintain it for the use of the operating companies. In the change from the toll to the assessment system of obtaining money, the Union Company was authorized to levy monthly assessments upon the operating companies therefor, and the operating companies agreed to assume and pay to the Union Company one-fourth part of such assessments. (*Sections Second and Third, contract of* 1858, *p.* 93, *Record.*) That did not correspond with the proportion of ownership stated in *Section Seventh* if it be so construed as to transfer a present title to the property. When the provisions of the contract of 1858 are considered in connection with the surrounding and attending facts it is clear the parties did not intend that the words "*shall each*

own," in the *Seventh section* of that contract, should have any other or different meaning than the words *"shall belong equally to,"* in *Section* 21 of the contract of 1852. (*Pp.* 86, 94, *Record.*) The ordinary meaning of the language used is supported by the attending and surrounding facts.

Acts of the parties under contract of 1858.

Third. The acts of the parties subsequent to the execution of the contract of 1858 cannot be harmonized or reconciled with any change in the title to the property resulting from it. Such evidence is of great importance in the way of rebutting an inference of intent to thereby transfer or change the title to the property.

Ten Eyck v. Whitbeck, 156 N. Y. 341, 352. There it was said with reference to a deed:

> "There must be both a delivery and acceptance with the intent of making the deed an effective conveyance."

Again, same page, after referring to presumptions, it was said:

> "But these presumptions may be repelled by proof of attendant facts and subsequent circumstances. Such as the possession and control of the property by the grantor, the declarations of the supposed grantee which are inconsistent with the transfer of the title, which, with the acts and conduct of the parties in relation to the property, are all circumstances to be considered in determining whether there has been a delivery and acceptance of the deed."

In *Carthage, T. P. Mills v. Village of Carthage,* 200 N. Y. 1, 14, it was said:

"Practical construction by uniform and unquestioned acts from the outset, especially when continued for a long period of time, is entitled to great, if not controlling weight, for it shows how the parties who made the contract understood it. If they do not know what they meant, who can know? Such a construction is presumed to be right, because it was made by the parties themselves when under the influence of conflicting interests."

Assessments of the property.

(*a*) Acts of the city of Troy. Following the execution of the contract of 1858 to 1907, a period of 49 years, the property was assessed to the Union Company. That was done by the assessors of the city and was therefore the act of the city. As the city is now contending the contract of 1858 transferred the title to the operating companies, its acts recognizing the continued ownership of the Union Company for nearly half a century would seem to be conclusive against its present contention.

Conveyances of parts of the real estate.

(*b*) The Union Company has at all times subsequent to 1858 asserted in every way its continued ownership. It has been during that entire period in possession of the property and its acts have been those of an owner. Subsequent to July 1, 1858, it executed and delivered conveyances of parcels of its real estate. (*Abstracts of Conveyances, p.* 130; *Exchange with the Warrens in* 1887, *p.* 318.) To such extent as any of the real estate, owned when the contract of 1858 was executed, has

been conveyed, the conveyances have been by the Union Company alone. Titles thus obtained have not been questioned by any one. Whether such conveyances were many or few is not material. They were acts of that company consistent with the continuance of its ownership of the property and inconsistent with the transfer of its title by the contract of 1858. They are undoubted evidence of its intent in that contract to retain rather than transfer its title.

Insurance of the station.

(*c*) The Union Company procured policies of insurance on the station in which it was named as the owner. November 10, 1858, the policies it then held were assigned to the city of Troy as collateral to its mortgage. The action of its board of directors December 29, 1858, included renewals of those policies. Similar action was taken January 22, 1859. (*Pp.* 155, 156.) That continued to 1862, when the station was burned and the insurers paid the losses to the city which turned the money so received over to the Union Company for use in rebuilding the station. (*P.* 162.) Until the mortgage was paid similar policies of insurance were procured and assigned to the city. At all times since the execution of the contract of 1858 the station has been insured in the name of the Union Company by policies containing a provision that they would be void if the interest of the insured in the property was not truly stated therein. (*Pp.* 190, 191, 203, 243, 244, *Special Term finding* 20.)

(*d*) Since the contract of 1858 was executed the Union Company has in its name as owner leased parts of the station and parcels of the property other than the railroad station. Some of those leases contained provisions authorizing the lessees to erect buildings on the property leased. It is not necessary to refer to the evidence relative to such leases as the Special Term found, *finding* 20, *p.* 244:

Leases of the property.

> "It (Union Company) has leased portions of the station not required for the common use of the four railroad companies using the same, and has leased land not occupied by the railroad and station, with the privilege of erecting buildings thereon."

All of the foregoing matters have been and are unequivocal acts of continued and present ownership of the property by the Union Company. Nothing appears to the contrary in the proceedings of the board of directors of that company. Whenever the city required anything to be done or omitted in connection with the railroad and station it called upon the Union Company to do or refrain from doing it. When a new station was to be built, it was constructed by that company. It was always treated as owner by the city, it accepted and lived up to that relation to the property and never by word or act assented to or acquiesced in the claim that its ownership ceased with the execution of the contract of 1858.

Acts of the operating companies.

(*e*) During the entire period following the execution of the contract of 1858 the acts of the operating companies, the alleged grantees, have been a continued practical denial of their ownership of the railroad, station and other property. They at all times acquiesced in the claim that the Union Company was the owner. They join with that company in that claim now. No act of theirs inconsistent with that claim appears in the record. In addition to what has been said on this subject is the fact that there is no evidence of the delivery of this contract by the Union Company to the operating companies, yet delivery of the instrument on which the alleged transfer of title is based is essential for it to have that effect. *Ten Eyck v. Whitbeck*, 156 N. Y. 341, 352. There it was said:

> "The delivery of a deed is essential to the transfer of title, and there can be no delivery without an acceptance by the grantee. * * * There must be both a delivery and acceptance with the intent of making the deed an effective conveyance."

The evidence fails to show either a delivery or acceptance in fact, or an intent of either party to deliver or accept. Tested by all recognized rules for the construction of contracts, it is plain the parties to the contract of 1858 never intended it should operate as a transfer of the title of this property from the Union Company to the operating companies and it cannot now be given that effect.

Who makes the claim.

4. As the alleged grantor and grantees join in a repudiation of the claim that the contract of 1858 operated as a transfer of the title to the property, it is important to inquire who now asserts it. It is evident the city of Troy is the one so asserting. It did not own any part of the property in 1858 and had no interest therein. It has not now any interest in it. What it seeks to do is to have the court hold the title to this property was by the contract of 1858 transferred to the operating companies and thereby get rid of the limitation of its assessment to $30,000 contained in the act of June, 1853. Its purpose is to in that way evade that limitation. Upon what possible theory can it be heard to put a construction upon the contract of 1858 which will permit it to so evade its obligation to exempt this property from taxation beyond the limited amount stated in that act when the Union Company and the operating companies, the alleged grantor and grantees, concur in asserting that such contract was not intended to and did not change the title from the Union Company and all the acts of the parties, including the city, are consistent with their assertion and utterly inconsistent with the present contention of the city? The parties to the agreement for the improvement desired by the city fully performed their contract, expending upwards of $700,000 in so doing. The city has had in the past and will in the future have the full benefit and advantage contemplated therefrom. It aided in procuring the passage of the act of 1853, and thereafter, to 1907, recognized the exemption contained in it in

the assessment of the property, never claiming that the title to it had been changed from the Union Company to the operating companies by anything in the contract of 1858. In that contract it agreed if the act of 1853 was repealed it would join in an application to the legislature to restore it, and if that was not done, it would refund to the Union Company the city taxes it was required to pay on any amount in excess of $30,000. If the judgment here for review is upheld on the ground that the act of 1909, the repealing act, is valid, the question at once arises as to the obligation of the city under that alternative provision of its agreement in 1858. If, however, it can secure an affirmance of that judgment on the ground that the right to the exemption was lost by a transfer of the title to the property to the operating companies in 1858, conceding the repealing act is invalid, it will be relieved from any obligation under that alternative provision for it can only arise from a valid repeal of the act of 1853. No strained or doubtful construction should be put on the contract of 1858 to enable the city to evade and repudiate its express agreement on which the other parties to it relied while it has had in the past and will retain in the future all the benefits and advantages arising from their full performance of such agreement. This should end favorable consideration of the contention of the city in this respect.

Result of discussion.

5. The foregoing discussion results in the following conclusions:

First. The exemption of the property of the Troy Union Railroad Company from taxation upon any amount in excess of $30,000 was, upon completion

of the railroad and station January 1, 1855, a contract property right.

Second. Such right was not waived or surrendered by that company by anything contained in the contract of 1858.

Third. Chapter 201 *of the laws of* 1909, which in form repealed the exemption act, *chapter* 462 *of the laws of* 1853, was invalid because it constituted an impairment of the obligation of a contract.

Fourth. The title to the railroad, station and other property was not transferred from the Troy Union Railroad Company to the operating companies by the contract of 1858. It still remains vested in that company and the judgment of the court below cannot be sustained on that ground.

The judgment of the Supreme Court of the State of New York should therefore be reversed and the cause remanded to that court with directions to enter a judgment sustaining the writ of certiorari issued therein and reducing the assessment complained of to $30,000.

LEWIS E. CARR,
Counsel for Plaintiff in Error.

WILLIAM L. VISSCHER,
Attorney.

Office Supreme Court, U. S.
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No. [redacted]63

Supreme Court of the United States

OCTOBER TERM, 1919

(No. 751, October Term, 1918)

THE PEOPLE OF THE STATE OF NEW YORK on the relation of the TROY UNION RAILROAD COMPANY,
Plaintiff in Error,
(Plaintiff & Appellant below),

against

G. FRANK MEALEY AND OTHERS as Assessors and another as Comptroller of the City of Troy, State of New York,
Defendants in Error,
(Defendants & Respondents below).

BRIEF FOR DEFENDANTS IN ERROR

G. B. WELLINGTON,
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Troy, N. Y.

Argued for
Defendants in Error
by
G. B. WELLINGTON,
Troy, N. Y.

SUPREME COURT OF THE UNITED STATES
October Term, 1919
No. 249

THE PEOPLE OF THE STATE OF NEW YORK on the relation of the TROY UNION RAILROAD COMPANY,

Plaintiff in Error,
(Plaintiff & Appellant below),

against

G. FRANK MEALEY AND OTHERS as Assessors and another as Comptroller of the City of Troy, State of New York,

Defendants in Error,
(Defendants & Respondents below).

BRIEF FOR DEFENDANTS IN ERROR

STATEMENT

In error to the Supreme Court of the State of New York in and for the County of Rensselaer, that State, to review a final order entered pursuant to the remittitur of the Court of Appeals, which affirmed a final order of the Appellate Division of the Supreme Court for the Third De-

partment affirming a final order of the Supreme Court at Special Term dismissing the petition herein for a Writ of Certiorari and quashing said writ, which was issued to review an assessment for the purposes of taxation levied against certain railroad properties in the City of Troy, N. Y.

The proceeding was instituted under sections 290 et seq. of the Tax Law of the State of New York, being Chap. 62 Laws of 1909. The proceeding is a special statutory proceeding for the review of assessments made for the purposes of taxation.

The opinion of Chester, J., at Special Term is reported 88 Miscellaneous Reports, 649, and printed in the Transcript of Record at page 291 et seq.

The Appellate Division affirmed on the opinion of Mr. Justice Chester, 179 App. Div., 951 (Fourth title on that page).

The opinion of the Court of Appeals on affirmance is reported 224 N. Y., 187.

The assessment was made in the year 1911. The issue raised by the writ and return thereto was referred to a referee to report to the Court with his findings of fact and conclusions of law. After evidence was taken the referee made his

report dismissing the petition and quashing the writ (Transcript, Print No. 228 et seq.).

The Supreme Court at Special Term confirmed the Referee's report and decided for the defendants (Print No. 302).

On appeal to the Appellate Division the final order of the Special Term was affirmed (Print No. 305).

The relator appealed to the Court of Appeals, where the order was affirmed (Print No. 1).

The order of the Court of Appeals was then made the order of the Supreme Court (Print No. 312).

OUTLINE OF DEFENDANT'S ARGUMENT

1. The relator relies on the contract of 1852.

That contract was annulled in 1858. Moreover it did not amount to a contract for exemption.

2. The relator relies on the Exemption Act of 1853.

That act was repealed in 1909. The Act of 1853 was a gratuity and consequently repealable.

3. Moreover the exemption given by the Act of 1853 was lost to the relator when it by the contract of 1858 in effect granted to its four constituent railroad companies an undivided nine-tenths of the real estate and railroad properties formerly owned by the relator.

4. The order should be affirmed or writ dismissed because the assessment against the interest of the four constituent companies having been confirmed by the Supreme Court of the State of New York, cannot be reviewed as no constituent company is before this Court. (Discussed under Point IV herein.)

The statement of facts which follows and the defendant's argument will demonstrate, I trust, the validity of the foregoing propositions.

FACTS

The assessment under review made in 1911 reads (print No. 230; original 399):

"Troy Union Railroad Co., Boston and Maine Railroad Co., Delaware and Hudson Railroad Co., New York Central and Hudson River Railroad Co.

The lands of roadbed and adjacent thereto in the several wards of the City, with rails, superstructures, depot buildings and appurtenances, being all the railroad property in the City of Troy, located between Madison St. on the south, Hoosick St. on the north, and the approach of the Delaware and Hudson Company's bridge on the west, excepting that portion assessed as franchises lying in public streets.

(Valuation, $1,000,000) (Real property)
Special franchise, 1911. $215,400."

On grievance day the relator filed a protest in writing raising certain questions, but the amount of the assessment was not complained of, except that it should be not over $30,000 (Print No. 215; original 371) by reason of the contract of 1852 (original No. 373) and by laws theretofore enacted "and still in force". The statute theretofore enacted was Chap. 462 Laws of 1853 (Original No. 44; print No. 25). By inference the repealing act of 1909 was thus challenged.

Chapter 462, Laws of 1853

"AN ACT providing for the taxation of the property of the Union Railroad Company of Troy.

Passed June 24, 1853, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Sec. 1. For the purposes of taxation in the City of Troy, and in the County of Rensselaer, the property of the Troy Union Railroad Company shall be estimated and assessed (as the common council of said City of Troy, by its contract with said Company, dated December third, eighteen hundred and fifty-two, agreed that the same should be) at the amount of the capital stock of said Company, and no more; and (as agreed in the said contract) the bridge of the Rensselaer and Saratoga Railroad Company over the Hudson River at Troy shall, for the purpose of taxation, not be estimated or assessed at any increased valuation by reason of the addition thereto, agreed for in said contract.

Sec. 2. This act shall take effect immediately."

This statute was repealed as follows:

Chapter 201, Laws of 1909

"AN ACT to repeal chapter four hundred and sixty-two of the laws of eighteen hundred and fifty-three, entitled 'An Act providing for the taxation of the property of the Union Railroad Company in Troy,' passed June twenty-four, eighteen hundred and fifty-three.

Became a law April 7, 1909, with the approval of the Governor. Passed, three-fifths being present.

Accepted by the City.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter four hundred and sixty-two of the Laws of eighteen hundred and fifty-three, entitled 'An Act providing for the taxation of the property of the Union Railroad Company of Troy, passed June twenty-fourth, eighteen hundred and fifty-three, is hereby repealed.

Sec. 2. This act is not retroactive and shall not be held to apply to or to affect any litigation pending at the time it becomes a law.

Sec. 3. This act shall take effect immediately."

The other leading facts are practically undis-

puted and are set forth in the "decision" of the Court at Special Term (Print No. 237; original No. 412).

The findings (some of them in condensed form) are as follows:

FINDING I. (Print No. 238)

"1. Chapter 255 of the Laws of 1851 was passed by the Legislature of the State of New York June 20, 1851, and duly became a law that year. It reads:

CHAP. 255.

AN ACT to authorize the City of Troy and certain railroad corporations to subscribe for and become the owners of stock for the construction of a railroad through the whole or some portion of the City of Troy.

Passed June 20, 1851, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Sec. 1. The corporation of the City of Troy, and the several railroad corporations whose railroads now or hereafter shall come to the City of Troy, or which have or shall have their business

terminus in, or run their trains to and from said city, may subscribe for and become the owners of stock in a railroad corporation to be organized under the act entitled, 'An Act to authorize the formation of railroad corporations and to regulate the same,' passed April second, one thousand eight hundred and fifty, for the construction of a railroad, with one or more tracks, through the whole or a portion of said city; but there shall not be more than one railroad through that part of the City of Troy lying between Adams and Federal streets. The corporation of the City of Troy shall not subscribe for or take more than one-fourth part of the capital stock of the corporation to be organized.

Sec. 2. The corporation of the City of Troy is hereby authorized to borrow, upon the bonds of said city, redeemable in not more than twenty years, at an annual interest of six per cent., a sum not exceeding the cost of the construction of such railroad; but no bonds shall be issued therefor by the corporation of said city until said corporation shall, by the several railroad corporations which are authorized to subscribe for stock by the first section of this act, and also by a mortgage on the railroad so to be constructed, its capital stock and franchises, be fully indemnified and made harmless against the payment of any bonds and the interest thereon which said City of Troy may issue under the authority of this act.

Sec. 3. All railroads which now or hereafter shall have their trains running from the City of Troy may, on equal terms and with equal privileges, use the railroad track or tracks hereby authorized to be constructed, and shall be entitled to at least two directors in said railroad corporation, who shall be residents of the City of Troy.

Sec. 4. Jonas C. Heartt, Elias Plum, Joseph M. Warren, Hiram Slocum, LeGrand B. Cannon, Isaac McConihe, Russell Sage, David Buell, junior, and Thomas Symonds, shall be commissioners to obtain subscriptions to the capital stock in the railroad corporation hereby authorized, and shall, by a majority of their number, be empowered to locate such railroad, subject to the approval of a majority of all the members elected to the common council of the City of Troy; and, in case of the death or refusal to act of any of said commissioners, the common council of said city shall fill such vacancy."

FINDING 2. (Print No. 239)

July 21, 1851, the Troy Union Railroad Company was incorporated under the General Railroad Law of 1850 by the filing of a certificate of incorporation. The capital stock was fixed at $30,000 * * *. Its corporate existence was to be one hundred years. Its purpose was to construct, operate and maintain a railroad for the conveyance of persons and property pursuant to the General Railroad Law of 1850, in or

through a portion of the City of Troy, with one or more tracks, etc.

FINDING 3. (Print No. 239; original 415)

Chapter 462 of the Laws of 1853 (the exemption statute in question) became a law in June, 1853. (Printed in full heretofore.)

NOTE. This statute in 1889 was held to be constitutional except as to the R. & S. R. Co. bridge.

People ex rel. Troy Union Railroad Co. v. Assessors, 52 Hun, 458. Affirmed without opinion, 117 N. Y., 625.

FINDING 4. (Print No. 239; original 416)

This is as to the form of the assessment for the year 1911. This has hereinbefore been set forth in full.

FINDING 5. (Print No. 240)

All the real estate of the Troy Union Railroad Company was acquired prior to July 1, 1858, excepting five small parcels valued, together, at $2,999.

FINDING 6. (Print No. 240)

December 3, 1852, an agreement was made

between the City of Troy, Troy Union Railroad Company, Rensselaer & Saratoga Railroad Company, Schenectady & Troy Railroad Company, Hudson River Railroad Company, and Troy & Boston Railroad Company. (See pages 80 et seq.)

FINDING 7. (Print No. 240; original 417)

(For the sake of emphasis I adopt in places large type not to be found in the original.)

July 1, 1858, an agreement was made between the City of Troy, party of the first part, the Troy Union Railroad Company, party of the second part, the Rensselaer & Saratoga Railroad Company, party of the third part, the New York Central Railroad Company, party of the fourth part, the Hudson River Railroad Company, party of the fifth part, and the Troy & Boston Railroad Company, party of the sixth part. (For convenience its important provisions, in condensed form will be given at this point, Pages 92 et seq.):

Whereas, by the Act of 1851 certain railroad corporations might become stockholders of the Troy Union Railroad Company; and whereas a suit had been commenced to foreclose the mortgage executed by the Troy Union Railroad Company to the City of Troy, bearing date December 1, 1852: "Now, therefore, the parties hereto, for the purpose of settling the matters involved

in said suit, and for the purpose of reforming THE CONTRACT ENTERED INTO by, or on behalf of, the above named parties, bearing date THE THIRD DAY OF DECEMBER, 1852, adopt this instead of and in place of the said contract, which IS HEREBY ANNULLED; and in consideration of the several covenants and agreements herein contained to be performed by each of said parties respectively, have covenanted and agreed, and do hereby covenant and agree each with the other as follows, to wit:

1. The party of the first part agrees that the Troy Union Railroad Company may continue to operate "their railroad in the City of Troy as now located and constructed * * *."

2. The Troy Union Railroad Company may continue to occupy the land on each side of Sixth Street for a passenger house.

3. The Troy Union Railroad Company shall raise by monthly assessments all sums necessary to pay its expenses of every kind, including the rent of the R. & S. bridge and all debts due to others from the party of the first part incurred since the first of July, 1858, and expense incurred since the first of July, 1858.

4. The four constituent railroad companies agree to pay to the Troy Union Railroad Company, monthly, one-fourth part of the assessment. If any company makes default in the

payment of an assessment, the Troy Union Railroad Company may exclude the defaulting company from the use of the tracks, passenger house and other property of the Troy Union Railroad Company.

5. The four constituent companies shall each have equal rights and privileges in the track, passenger house (separate rooms therein as now occupied) and other property of the Troy Union Railroad Company, and the R. & S. Company's bridge without restriction, except such reasonable and uniform rules, regulations and rent charges for offices as the Troy Union Railroad Company may prescribe, and subject to rules of the R. & S. Company as to the bridge; the bridge to remain the property of the R. & S. Company.

6. The Troy Union Railroad Company shall pay to the R. & S. R. Co. an annual rent of $11,500, in monthly installments, for the use of the bridge.

7. "The New York Central Railroad Company, and the Hudson River Railroad Company, SHALL EACH OWN ONE-FOURTH PART, and the Rensselaer & Saratoga Railroad Company, and the Troy & Boston Railroad Company, SHALL EACH OWN ONE-FIFTH PART of the railroad, passenger house, and all other property, rights and franchises of the Troy Union Railroad Company, subject to the lien of the mortgage thereon to the City of Troy."

8. The mortgage executed by the Troy Union Railroad Company to the City of Troy shall remain in full force and effect.

Provision is made for the several liability of the constituent companies for the proportion which each should bear of the debt to the City of Troy from the Troy Union Railroad Company.

If at any time default shall be made by any of the railroad companies in the payment of any installment of principal or interest to the City of Troy, the right of such defaulting railroad company to the use of the Troy Union Railroad Company's track and other property shall cease "and thereupon its title and interest in said Union Railroad shall vest in the City of Troy. And the City of Troy, in addition to all other legal remedies, may apply to the proper Court for an injunction order to restrain such railroad so in default from using the Troy Union Railroad Company's tracks, passenger house and other property, or for such other relief as the Court may deem just and proper." (Original 167; page 95.)

9. The rate of speed shall not exceed fifteen miles an hour.

10. The Troy Union Railroad Company shall erect swing bars at certain streets.

11. "The party of the first part agree, that if the law passed by the Legislature of the State of New York, June 24, 1853, relative to the taxation of the property of the Troy Union Railroad Company in Troy, shall at any time be repealed, the Common Council of the City of Troy shall join in an application to the Legislature of the State of New York that the Troy Union Railroad Company be exempt from taxation upon an amount exceeding the present amount of its capital stock * * * *; and if such law shall not be passed, the Common Council of the City of Troy shall refund to the Troy Union Railroad Company an amount equal to the City taxes imposed upon the Troy Union Railroad Company for any valuation exceeding its present capital stock." (Page 96.)

12 and 13. Mutual agreements for the use of the tracks of the constituent companies.

14. The stock of the Troy Union Railroad Company shall belong, one-fourth part each, to the New York Central Railroad, Hudson River Railroad, the Rensselaer & Saratoga Railroad and the Troy & Boston Railroad Companies. * * *"

15. Any other railroad company which shall hereafter run its train to or from the City of Troy, "may on equal terms and with equal privileges and equal ownership, use the railroad tracks, passenger house and other property con-

structed by the Troy Union Railroad Company, and shall have equal ownership therein, * * * *"

16. The Troy Union Railroad Company shall prescribe police regulations.

17. There shall be no other railroad track between Hoosick Street and Adams Street.

18. Each constituent railroad company shall be entitled to three directors, and the Mayor of the City of Troy shall be *ex officio* the remaining director.

19. No company running trains to New York shall have certain privileges.

FINDING 8. (Print No. 240; Original 417)

Chapter 201, Laws of 1909, repealed the exemption act of 1853. It has already been set forth.

FINDING 9. (Print No. 241; original 418)

The protest in writing filed on grievance day raised the questions of law presented herein. The amount of the assessment is not attacked excepting that it should not be over $30,000 because of the alleged contract and the exemption act. The protest is printed on page 215; original 371.

FINDING 10. (Print 241; original 418.) In and prior to the year 1852 the Troy & Greenbush Railroad had a terminus on River Street at Adams Street. Passengers were discharged somewhere between the foot of State Street and the Troy House.

The terminus of the R. & S. R. was at Green Island. Cars were brought over the bridge by horses. They came down River Street and stopped at the Troy House.

Schenectady & Troy Railroad had its terminus on Green Island. Passenger cars were brought over the bridge by horses to the steamboat landing at the foot of State Street.

The terminus of the Troy & Boston Railroad was on River Street in front of the Mansion House. The cars were drawn by horses from Hoosick Street. There was at that time no Union Station in the City of Troy.

Prior to December 3, 1852, the Troy & Greenbush Railroad Company was leased by the Hudson River Railroad Company. Prior to July 1, 1858, Schenectady & Troy Railroad Company was leased to the New York Central Railroad Company.

FINDING 11. (Print 242; original 419.)

Following the organization of the Troy Union

Railroad Company, it acquired title to parcels of real estate in the City of Troy. This finding should be read in connection with Finding 5 in which it appears that all the real estate of the Troy Union Railroad Company was acquired before July 1, 1858, excepting a few parcels valued at $2,999 acquired thereafter.

The Troy Union Railroad Company constructed a Union Station and united the termini of the four railroads. The City of Troy issued its bonds to the aggregate amount of $707,000, the proceeds from the sale of which were used by the Troy Union Railroad Company for the purchase of land and the construction of the railroad and station.

It is to be observed in connection with this finding that these bonds were all provided for in 1852 (Print 221; original 382). The mortgage to the City of Troy executed by the Troy Union Railroad Company to protect the City was dated December 1, 1852, and was recorded December 31, 1852 (Print 28; original 49).

$500,000 of the bonds were issued January 1, 1853, and the remainder in the year 1854. The bonds were all paid; the last ones in 1883 (Print 201; original 348).

The four railroad companies, parties to the contract of December 3, 1852, executed and delivered to the City of Troy separate agreements

indemnifying the City against default on the mortgage of the Troy Union Railroad Company. The obligation of each was limited to $125,000.

FINDING 12 (Print 242; original 420).

The station was completed January 1, 1855, and thereafter was occupied and used in common by the Troy Union Railroad Company, the relator, and the four constituent railroad companies; the former four termini were given up.

FINDING 13 (Print 242; original 420).

BY THE CONTRACT OF JULY 1, 1858, THE CONTRACT DATED DECEMBER 3, 1852, WAS ANNULLED.

The relator excepted to this finding (Print 289; original 504).

The relator requested the Court at Special Term to find the fact of annulment (Print 276; original 481).

This makes the exception unavailable. Moreover the finding is sustained by uncontradicted evidence—to wit, a recital in the contract of 1858 (Print 92; original 162).

FINDING 14 (Print 242; original 420). Exception (Print 289; original 504). No other contract or instrument relative to the Troy Union

Railroad Company's railroad station or other property, or to the title thereto, was executed after July 1, 1858, and the parties to the contract did not thereafter act, or assume to act, under any other or different contract.

This was requested by the relator (18th request; print 278). This renders the exception unavailable. Moreover the fact is supported by the evidence (See Point I).

FINDING 15. In 1871 the R. & S. Railroad was leased to the Delaware & Hudson Company. Subsequent to July 1, 1858, the New York Central Railroad Company and the Hudson River Railroad Company consolidated and became the New York Central & Hudson River Railroad Company. The Troy & Boston Company was consolidated with the Fitchburg Railroad Company, and the consolidated railroad was leased to the Boston & Maine Railroad (Print 242; original 421).

FINDING 16 (Page 243; original 421). The mortgage given by the Troy Union Railroad Company to secure the City of Troy on account of the City bonds issued was paid prior to July 26, 1901, and on that day was discharged of record in the Rensselaer County Clerk's office. In fact the last bonds were paid in 1883 (Page 202; original 348).

FINDING 17 (Page 243; original 421). The

Troy Union Railroad Company has since its organization in 1852 retained and continued its corporate existence, and was in the year 1911 a duly organized, existing and acting corporation, having legal right to acquire, hold and own real estate used and to be used for railroad purposes. Its capital stock has been $30,000.

FINDING 18 (Page 243; original 422). Each year down to 1886 the Troy Union Railroad Company was assessed on the assessment-rolls of the City of Troy for its property therein at $30,000. No change was made in the assessment following the execution of the contract of July 1, 1858, until an attempt was made by the City of Troy to change the assessment in 1886 and 1887. This attempt was a failure, and following those years the assessment continued at $30,000 through the year 1906.

FINDING 19 (Page 243). The assessment against the Troy Union Railroad Company was raised in 1886 and 1887 to $783,984. As will be seen by reference to the proceedings (Page 52 et seq.) the theory of the City then was that the exemption act was unconstitutional. The courts held to the contrary.

FINDING 20 (Page 243). Following the execution of the contract of July 1, 1858, and under its provisions, the Troy Union Railroad Company has continued to maintain the railroad and station, employing men and purchasing materials.

It has contracted for work needed to keep the railroad and station in condition. It has had supervision and control of the station. It has erected and maintained gates at street crossings and employed gatemen and flagmen. It has erected and maintained signal towers and has manned them. It has kept the station insured in its own name as owner, and at one time assigned policies of insurance thereon to the City of Troy as collateral for its mortgage. Since July 1, 1858, it has conveyed some portion of lands acquired before that date. It has leased portions of the station not required for common use. It has leased lands not occupied by the railroad station under the privilege of erecting buildings thereon. It has rebuilt the station three times—the last time in 1902. This last built station is insured in the name of the Troy Union Railroad Company as owner. The policies contained the provisions that they will be void if the interest of the insured in the property covered thereby is not truly stated therein.

FINDING 21 (Page 244). Exception to one sentence (Page 289; original 504). (See testimony of Daniel Robinson, and cross-examination of Francis A. Harrington; page 61; original 108 et seq. and page 192 et seq.).

The Troy Union Railroad Company pays no dividends. Its receipts and disbursements each year are equal. Its disbursements are provided for by an assessment made upon the three rail-

road companies owning its stock. Its passenger house, built in 1902, was paid for by the three railroad companies owning its stock—N. Y. C. & H. R. Co. paying one-half, B. & M. R. Co. paying one-fourth, and the D. & H. R. R. Co. paying one-fourth.

The railroad companies holding stock in the Troy Union Railroad Company in 1852, and their successors, have since that time continuously occupied and used the passenger station and tracks without restriction. The Troy Union Railroad Company does not operate and never has operated any railroad. It has not owned and does not own any locomotive, or passenger cars or freight cars, or baggage cars. It has no train dispatcher. It carries no passengers and has no transportation business. The men employed to take care of the tracks and the flagmen at crossings are paid by the railroads using the tracks in proportion to their stock ownership.

ADDITIONAL FACTS PROVED BY UNCONTRADICTED EVIDENCE

The Troy Union Railroad Company does not operate any train that comes into or goes out of the station. The ticket agents who sell tickets make returns direct to the companies interested. The Troy Union Railroad Company gets none of the receipts from the sale of tickets.

In making up accounts against constituent companies, no sum is included for the use of railroad tracks. The Troy Union Railroad Company does not participate in making time-tables. Passenger tickets sold do not show that the various routes to and from the station at Troy are over the Troy Union Railroad. A ticket bought at the station at Troy for New York purports to be issued by the N. Y. C. & H. R. R. Co. for a continuous journey; likewise a ticket bought at Troy to any station on the B. & M. Railroad and the D. & H. Railroad. Cross-examination of F. A. Harrington (Page 192 et seq.).

In the official minutes of the Troy Union Railroad Company it appears that the contract of July 1, 1858, was adopted by that Company. In section 7 of the agreement the fractional ownership of the then four constituent railroad companies is emphasized by underscoring in red ink; and at the end of section 7 in red ink appears this memorandum: "1/10 who owns?" This indicates that the Troy Union Railroad Com-

pany's directors understood that nine-tenths of the property had been conveyed to the constituent railroad companies, and someone raised the inquiry as to who owned the remaining one-tenth (Page 167; original 289—Page 210; original 363).

It is important to note that certiorari proceedings brought to review the assessment against the Troy Union Railroad Company of $783,984 in 1886, came before Mr. Justice Edwards of the New York Supreme Court. The contract of 1858 was in that proceeding before the Court.

The Court found the following fact:

"It does not manage or operate its said railroad, but the same belongs to four other railroad companies, who do mutually own and use the Troy Union Railroad; and its Board of Directors is composed of stockholders of said four other railroad companies" (Page 72; original 125).

Mr. Justice Edwards also found upon request the following:

"The said contract of July 1, 1858, does not, nor does any provision thereof, exempt the relator's said property or any part thereof, or any portion of the value thereof, from taxation, and that so far as it undertakes to bind the Common Council of said City of Troy, or the municipal

corporation itself, to join in an application to the Legislature upon any contingency to exempt the Troy Union Railroad Company or its property from taxation upon an amount not exceeding the then present amount of its capital stock, the same is illegal and *ultra vires.* Nor may such provisions in said contract control the action of General Assessors in said City in determining the value of the relator's said property for the purposes of taxation" (Page 73; original 128).

That case on appeal is reported—People ex rel. Troy Union Railroad Company vs. Assessors, 52 Hun, 458. Affirmed without opinion, 117 N. Y., 625.

POINTS

I.

The contract of 1852 was annulled in 1858

The fact that the contract of 1852 was annulled in 1858 by the parties thereto renders it unavailable to the relator as an executory contract for exemption from taxation.

The relator requested the Court at Special Term to find as fact that the contract of 1852 was annulled by the contract of 1858, as follows:

"15. By the contract of July 1st, 1858, hereinbefore found the contract of December 3rd, 1852, was annulled and those parts of that contract not in terms or in effect reproduced in the later contract upon its execution ceased to be of effect."

Found. A. C.

(Page 276; original 481).

This finding was incorporated in the decision of the Court as follows:

"13. By the contract of July 1, 1858, hereinbefore found, the contract dated December 3, 1852, was annulled."

(Page 242; original 420).

But this is not all. The relator also requested the Court to find, and the Court found, that the parties since July 1, 1858, have acted under the contract of 1858 and not under any other or different contract, as follows:

"18. No evidence was introduced or offered showing that any other contract or instrument relative to the Troy Union Railroad Company's railroad, station and other property or to the title thereto or to any part thereof was at any time after the execution of the contract of July 1st, 1858, executed, or that the parties thereto acted or assumed to act under any other or different contract, and it is hereby found as a fact such contract is the instrument under and in accordance with which the parties thereto have at all times acted relative to, and in connection with, said railroad, station and other property and the maintenance and use thereof."

Found. A. C.

(Page 278; original 483).

This requested finding was incorporated in the decision of the Court as follows:

"14. No other contract or instrument relative to the Troy Union Railroad Company's railroad station or other property, or to the title thereto, or any part thereof, was at any time after the execution of the contract dated July 1,

1858, executed. The parties to said contract dated July 1, 1858, did not thereafter act, or assume to act, under any other or different contract, and said contract dated July 1, 1858, is the instrument under and in accordance with which the parties thereto have at all times acted relative to and in connection with said railroad station and other property and the maintenance and use thereof" (Page 242; original 420).

These important facts—to wit, the annulment of the contract of 1852 and the exclusive recognition of the contract of 1858—were based upon uncontradicted evidence. The former is proved by the recital in the contract of 1858 (to be found at page 92; original 162) and the latter by the fact that the contract of 1858 was pasted in the minute-book containing the proceedings of the directors of the relator (Page 210; original 363), and that so far as the evidence discloses that contract remained unmodified.

I have drawn the inference that the learned counsel for the relators means to say that while a contract may be annulled, any situation which has been completely performed under the contract will survive such annulment. I suppose that means, by way of illustration, that "A" may agree with "B" to sell and deliver, within a week's time a horse for a hundred dollars, and within a year's time a wagon for a hundred dollars. The horse is delivered and paid for, but before the wagon is delivered the parties annul the agree-

ment. The effect of such an annulment would make unenforceable the executory portion of the contract. It would not make void the completed sale and delivery of the horse.

This however does not aid the relator; for on the assumption that the contract of 1852 bound the City of Troy to exempt the property of the the Troy Union Railroad Company from taxation, yet nevertheless that contract in its very nature was executory. Each completed year's exemption under the contract became executed, but as to future years the Contract must remain executory. The annulment of the contract would then annul this executory feature. I admit that it would not do away with the previous exemptions the benefit of which the Company had received in escaping taxation. In other words, in 1858, when the agreement was annulled, the City of Troy would not be permitted to assess the property of the Railroad at its full value for preceding years upon a theory analagous to that of property omitted from assessment-rolls by mistake, but it would permit the Assessors (but for the Statute of 1853) in the then future years to assess the property at its full value.

II.

The contract of 1852 did not provide that the property of the relator should be exempt

If there was a contract for exemption, then in effect there must be found words which mean that "the property of the Troy Union Railroad Company shall be exempt from taxation on an assessment exceeding $30,000."

No such agreement is to be found in the intrument, and it must be admitted that no such agreement was within the power of the City to make. It cannot be claimed that the Act of the Legislature of 1853 was in itself a contract between the State and the Railroad Company. But it is assumed by the relator that in the contract of 1852 there is to be found the exemption, which in turn was sanctioned by the Legislature. It was not within the Constitutional power of the Legislature to make a new or different contract for the parties. It could not do that directly; nor indirectly by legislative construction. But even though this objection did not exist there is another answer to the relator's contention. It is claimed that the State having assented to the alleged attempt of the City to make such a contract, the contract became valid and binding. To support this position the phraseology of the Statute of 1853 is referred to. It is to be noted that the Statute of 1853 uses this expression: "as the Common Council of the City of Troy by its con-

tract with said Company dated December 3, 1852, agreed that the same should be."

This recital is not conclusive.

Wigmore on Evidence (1904 edition)
Vol. 2, page 1662, Sec. 1352.

Our Court of Appeals has held that that declaration in the Statute is not correct (page 323; original 566). The Common Council never made any such contract. But assume that the Legislature had the right to construe the contract and that the language of the Statute amounts to a legislative construction of the contract, then the most that can be said is that because of the Statute of 1853 we are compelled to conclude that the Common Council in 1852 contracted for the exemption.

Assuming, without admitting, that the Common Council had the power to make such a contract by reason of the expression quoted in the Statute—that is, assuming that the Legislature by the language quoted ratified an unauthorized act of the Common Council—then the result is that the exemption existed both by virtue of the Statute of 1853 and by the contract of 1852. The conclusion must be, then, according to the theory of the relators, that the contract of 1852 was a contract for an exemption to last an indefinite length of time. **But that contract was annulled.** The parties by unanimous consent an-

nulled it. **And in response to relator's request the Court found as a fact that the contract of 1858 annulled the contract of 1852, and that since 1858 the parties have not acted or assumed to act under any contract other than the contract of 1858** (Page 276; original 481, and page 278, 18th request). Where is there authority for the insinuation of the relator that a contract for exemption differs in its nature from other contracts, so that the parties themselves may not change it?

III.

The exemption Statute was a mere gratuity and Chapt. 201 Laws of 1909 the repealing act is valid.

The statute repealed—Chapter 462 of the Laws of 1853—reads as follows (Page 54):

"An act providing for the taxation of the property of the Union Railroad Company in Troy.

Passed June 24, 1853, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. For the purpose of taxation in the City of Troy and in the County of Rensselaer, the property of the Troy Union Railroad Company shall be estimated and assessed (as the Common Council of said City of Troy by its contract with said company, dated December 3, 1852, agreed that the same should be) at the amount of the capital stock of said Company, and no more; and (as agreed in the said contract) the bridge of the Rensselaer and Saratoga Railroad Company over the Hudson River at Troy shall for the purpose of taxation not be estimated or assessed at any increased valuation by reason

of the addition thereto agreed for in said contract.

Section 2. This Act shall take effect immediately."

(Note. The provision as to the R. & S. bridge is unconstitutional.

People ex rel. Troy U. R. Co. vs. Carter, 52 Hun, 458; 117 N. Y., 625.

The bridge has been for years assessed at its full value.)

I shall attempt by a review of the facts to justify the conclusion of the courts below that the exemption was a mere gratuity. It will be seen that the relator did nothing and was not induced to do anything by reason of the exemption act of 1853.

June 20, 1851, Chapter 255 of the Laws of 1851 was passed. It authorized the City of Troy and the railroad corporations then in Troy to subscribe for and "become the owners of stock in a railroad corporation to be organized under the act entitled, 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April 2d, one thousand eight hundred and fifty, for the construction of a railroad with one or more tracks through the whole or a portion of said City * * * *."

Section 2 provided that the City of Troy was authorized to borrow upon six per cent. bonds of the City a sum not exceeding the cost of the construction of such railroad.

It was then provided that these bonds should be secured by a mortgage on the railroad to be constructed and that the City should be fully indemnified against any payment of any bonds which the City might issue under the act.

July 21, 1851, there was filed in the office of the Secretary of State the Certificate of Incorporation of "The Troy Union Railroad Company," under the General Railroad Act, being Chapter 140, Laws of 1850, with a capital of $30,000 (Page 23; original 40).

October 11, 1852, city ordinance passed authorizing the bond issue (Page 220; original 381 et seq.).

December 3, 1852 (Page 80) a contract was entered into between the City of Troy, the Troy Union Railroad Company and the other railroad companies. One of its provisions was that the City should join in an application to the Legislature for an act to exempt the Troy Union Railroad Company from taxation "upon an amount exceeding the present amount of its capital stock." **This contract was expressly annulled in 1858** (p. 92; original 162. Finding 13, page 242).

(Note. The City did not contract that the assessed valuation of the railroad property should be $30,000. The City had no power to make such a contract. The agreement was simply that the City would ask the Legislature to grant the favor.)

December 16, 1852, a mortgage was executed by the Troy Union Railroad Company to secure the payment of the bonds of the City of Troy, with the proceeds of which the railroad and passenger house were built. (These bonds amounted to $707,000 and have all been paid; Page 202).

June 24, 1853, Chapter 462 of the Laws of 1853 the exemption act was passed. This law is quoted above.

July 1, 1858, an agreement in writing was entered into between the City of Troy, Troy Union Railroad Company and the other railroad companies. **By its terms the contract of December 3, 1852, was expressly annulled.** It was also agreed (Section 11) "that IF THE LAW PASSED by the Legislature of the State of New York, JUNE 24, 1853, relative to the taxation of the property of the Troy Union Railroad Company in Troy SHALL AT ANY TIME BE REPEALED, the Common Council shall join in an application," etc. The agreement to apply again to the Legislature for a renewal of the exemption

was held to be void in the Carter case (Page 73; original 128).

CHAPTER 462 OF THE LAWS OF 1853 WAS NOT A CONTRACT BETWEEN THE STATE AND THE TROY UNION RAILROAD COMPANY.

1. The exemption statute of 1853 was no part of the original "Charter" of the Troy Union Railroad Company. It had no special "Charter", but was organized under the General Law.

2. When the exemption statute became a law, the Company was a corporation with its nominal capital and its actual working capital all provided for.

3. The exemption statute was not a contract with the company. It was not founded on any valuable consideration. It was a mere concession, a gratuity not connected with any service or duty imposed upon the corporation. Therefore, it could be repealed.

"Where an exemption of the property of a corporation from taxes, conceded by an act of a State Legislature, was spontaneous, and no service or duty or other remunerative condition was imposed on the corporation, it belongs to the class of laws denominated *privilegia favorabilia*

* * * and may be revoked at the pleasure of the sovereign."

Rector, etc. vs. County of Philadelphia, 24 How. (U. S.) 300.

Following this case see

People ex rel. vs. Commissioner, 47 N. Y., 501.

In that case the "Society of the New York Hospital," a corporation formed prior to 1816, was by Chapter 257 of the Laws of 1822, exempted from taxation. The exemption act formed no part of the original Charter. The exemption act was in effect repealed by Chapter 875 of the Laws of 1869.

The Court of Appeals held that the exemption act was not a contract between the State and the corporation founded on a valuable consideration, but was a mere concession by the Legislature not connected with any service or duty imposed upon the corporation and could therefore be repealed.

See also Tucker vs. Ferguson, 22 Wall., 527.

In that case the following facts appeared:

In 1857 a railroad company was organized under the General Law of the State of Michigan.

In 1871 the Legislature provided that no lands of the Company should be subject to taxation for three years.

Before the three years elapsed the Legislature passed a law taxing all the lands of the Company. This Court held, "THERE WAS NO CONSIDERATION. THE COMPANY WAS REQUIRED TO DO NOTHING and did nothing in return. As between individuals the stipulation would belong to the category of nude pacts. It has no higher character because one of the parties was a state, the other a corporation, and it was put in the form of a statute. IT WAS THE PROMISE OF A GRATUITY SPONTANEOUSLY MADE, WHICH MIGHT BE KEPT, CHANGED OR RECALLED AT PLEASURE * * *."

"Taxing power is vital to the functions of government. It helps to sustain the social compact and to give efficacy. It is intended to promote the general welfare. It reaches the interests of every member of the community. It may be restrained by contract in special cases for the public good where such contracts are not forbidden, BUT THE CONTRACT MUST BE SHOWN TO EXIST, THERE IS NO PRESUMPTION IN ITS FAVOR. EVERY REASONABLE DOUBT SHOULD BE RESOLVED AGAINST IT. When it exists it is to be rigidly scrutinized and never permitted to extend either in scope or duration beyond what the terms of

concession clearly required. It is in derogation of public rights and narrows a trust created for the good of all."

See also West Wisconsin R. Co. vs. Board of Supervisors, 3 Otto, 595.

In that case, in 1864, the Legislature of Wisconsin passed an act providing that all the lands of the railroad company should be EXEMPT FROM TAXATION FOR TEN YEARS. It was then provided that the lands might be mortgaged for the purpose of raising funds to build the railroad without being subject to taxation. For the facts of the case the Court is respectfully referred to the report of the case.

Held "that THE EXEMPTIONS IN QUESTION WERE GRATUITIES offered by the State without any element of a contract. There was no assurance or intimation that they were intended to be irrevocable or that the laws in question should not be at all times SUBJECT TO modification or REPEAL in like manner as other legislation * * *. The State asked for no promise from the Company and the Company gave none. It was optional with the Company to mortgage its lands or not and to complete or not the road within two years * * *. In such cases a reasonable doubt is fatal to the claim. Prima facie every presumption is against it. It is only when the terms of the concessions are too

explicit to admit fairly of any other construction that the proposition can be supported."

City of Rochester vs. Rochester R'way Co., 182 N. Y., 99—205 U. S., 236.

In that case a railroad company was incorporated in 1862 under the General Railroad Law. In 1869 the Legislature passed an Act which contained an exemption from local assessments as follows:

"But whenever any of said streets are by ordinance or otherwise permanently improved, said Company shall not be required to make any part or portion of such improvement or bear any part of the expense thereof, but it shall make its rails in such street or streets conform to the grade thereof."

This exemption statute was repealed by section 98 of the General Railroad Law, providing for the payment by a street railroad company of the cost of paving between the rails of its tracks and two feet outside thereof.

The Court of Appeals in discussing the question whether the Exemption Statute was in the nature of a contract between the State and the Railroad Company, said in part:

"To determine this question it is necessary to consider the condition of the parties when the statute was enacted and in that consideration to

keep constantly in view the well-settled rule for the construction of statutory exemptions from taxation as declared by the Supreme Court of the United States in a long and unbroken line of decisions. In Yazoo, etc. Ry. Co. v. Adams (180 U. S.) it is said: Exemptions from taxation are not favored by law, and will not be sustained unless such clearly appear to have been the intent of the Legislature. Public policy in all the states has almost necessarily exempted from the scope of the taxing power large amounts of property used for religious, educational and municipal purposes; but this list ought not to be extended except for very substantial reasons; and while, as we have held in many cases, legislatures may, in the interest of the public, contract for the exemption of other property, such contract should receive a strict interpretation and every reasonable doubt be resolved in favor of the taxing power. Indeed, it is not too much to say that courts are astute to seize upon evidence tending to show either that such exemptions were not originally intended, or that they have become inoperative by changes in the original constitution of the companies. (See cases there cited, particularly New Orleans City & L. R. R. Co. v. New Orleans, 143 U. S., 192, and Memphis Gas Light Co. v. Shelby Co., 109 U. S., 398).

The Court then said further:

"The statute did not grant the franchise; that

had been already acquired. Nor does the record disclose even a suggestion that there was entertained any question as to its validity. It is settled by authority that an exemption from taxation or regulation of charges granted by statute to be irrevocable must be based on a consideration; when a mere gratuity or privilege it may be recalled at any time. * * * But the act of 1869 neither amends nor assumes to amend the charter of the company, and if it did it would be subject to the constitutional reservation of amendment or repeal."

4. THE CONTRACT OF 1858 SHOWS THAT THE LAWYERS WHO DREW THAT INSTRUMENT UNDERSTOOD THAT THE LAW OF 1853 COULD BE REPEALED for they sought to bind the City by an agreement as to what would be done by some future Common Council in case the act should be repealed. Such agreement is void (Page 73; original 128).

THERE WAS NO CONTRACT BETWEEN THE CITY OF TROY AND THE TROY UNION RAILROAD COMPANY TO EXEMPT IT FROM TAXATION.

The language of the contract of 1852 was as follows: "The party of the first part" (the City of Troy) "agree that the Common Council of the City of Troy shall join in an application to the legislature of the State of New York that the Troy Union Railroad Company may be exempt

from taxation upon an amount exceeding present amount of its capital stock * * *. If such law shall not be passed the Common Council of the City of Troy shall refund to the Troy Union Railroad Company an amount equal to the city taxes imposed upon the Troy Union Railroad Company for any valuation exceeding its present capital * * *."

This contract was carried out.

The contract of 1852 was by the parties themselves expressly annulled by the contract of 1858. The language of the contract of 1858 in this particular is as follows: "Now, therefore, the parties hereto * * * for the purpose of reforming the contract entered into * * * bearing date the 3rd day of December, 1852, adopt this instead of and in place of the said contract WHICH IS HEREBY ANNULLED" (Page 92; original 162).

It is then provided by the contract of 1858 that,

"If the law passed by the legislature of the State of New York June 24, 1853, relative to the taxation of the property of the Troy Union Railroad Company in Troy, SHALL AT ANY TIME BE REPEALED, the Common Council of the City of Troy shall join in an application to the Legislature of the State of New York that the Troy Union Railroad Company be exempt

from taxation upon an amount exceeding the present amount of its capital stock * * *. And if such law shall not be passed, the Common Council of the City of Troy shall refund to the Troy Union Railroad Company an amount equal to the city taxes imposed upon the Troy Union Railroad Company for any valuation exceeding its present capital stock * * *" (Page 96; original 168).

Thus it is seen that the only contract entered into by the City of Troy was to petition the Legislature for an exemption and to remit taxes in case the Legislature should not act.

This provision of the contract of 1858 has been held to be void (Page 73; original 128).

Judge Edwards, who decided the Carter case in 1888 held that this contract of 1858 did not exempt the Troy Union Railroad Company property or any part thereof from taxation and that, in so far as it undertook to bind the Common Council of the City of Troy to join in an application to the Legislature upon any contingency to exempt the Troy Union Railroad Company or its property from taxation, it was illegal and *ultra vires.*

There is not in existence any contract whereby the City of Troy has bound itself to an exemption from taxation in favor of the Troy Union Railroad Company.

EVEN THOUGH THE ACT OF 1853 SHOULD BE CONSTRUED TO BE A PART OF THE ORIGINAL "CHARTER" GRANTED TO THE TROY UNION RAILROAD COMPANY, NEVERTHELESS THE LEGISLATURE HAS THE POWER TO REPEAL IT.

By Article 8, Section 1 of the New York State Constitution of 1846, it was provided as follows:

"Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section, may be altered from time to time or repealed."

This provision of the Constitution existed before the Troy Union Railroad Company was incorporated. If the Act of 1853 is construed to be a part of the Charter or contract entered into between the State and it, nevertheless the Legislature has the power to alter or annul any provision in the Charter.

See Union Passenger R'way Co. vs. Philadelphia, 11 Otto, 528.

This case is directly in point.

See People ex rel. vs. Gass, 190 N. Y., 323.

Referring to the Exemption Act, our General Term in 1889 said:

"While this act has the form of fixing the amount at which the company is to be assessed, it is practically an act that all property of the company beyond that amount shall be exempt. THIS MAY BE UNJUST TO OTHER PERSONS, NATURAL AND ARTIFICIAL, IN THE STATE, BUT THE INJUSTICE, IF ANY, IS ONE THAT WE CANNOT REDRESS. THE POWER IS IN THE LEGISLATURE."

People ex rel. Troy U. R. Co. vs. Carter, 52 Hun, 458.

An exemption of the Company's property in 1853 could be secured in two ways—by a contract authorized by the Legislature or by a statute of exemption. It is claimed by the relator that both courses were pursued. The advantage to the relator in the first method would lie in the constitutional protection, which would not extend to a mere statute of gratuity. Although the contract for exemption was annulled in 1858, yet the exemption continued because of the statute of 1853. Had it been intended by the parties that any alleged exemption feature of the contract of 1852 should remain and survive the annulment of the contract, then a proviso to that effect would have been inserted in the contract of

1858. Not only was such a provision omitted in 1858, but the parties expressly recognized the repealability of the Act of 1853.

Indeed it is safe to go a step further. Assume that the City of Troy made an agreement on its part that the property of the Troy Union Railroad Company should be exempt from taxation. There was no consideration passing to the City for such an agreement. There was nothing required of the Railroad Company based upon such an agreement, and the language of the agreement itself negatives the idea that the exemption was to be a condition precedent to the building of the road, etc.

If the formation of the Troy Union Railroad Company, the furnishing of its capital, the providing funds with which land should be bought, and the railroad, tunnel, bridges and passenger house should be built, were conditioned upon the granting of the exemption, then that would be evidence of a contract for an exemption which would have brought the case within some of the authorities. But there was no such condition. The corporation was organized and fully financed by the end of 1852. The exemption act was not passed until 1853. Nothing was required of the Troy Union Railroad Company which it performed as a condition for, or a reason for, the exemption. It did not agree to do anything because of the exemption. On the contrary, the contract itself contemplated that the exemption

might not be granted, and then followed a provision as to what the City would do in case it were not granted—showing clearly that the building of the road, etc., were to proceed even though there should be no exemption.

Counsel cannot name one thing which was required of the Troy Union Railroad Company as a consideration for the exemption. The fact that after the exemption the Company spent money raised from the sale of the bonds is immaterial. Of course spending money is to be found in every case in which an exempted corporation has been a going concern. All the cases cited upon the defendant's Brief present that feature.

The authorities cited by the learned counsel for the relators are distinguishable from the case at bar.

In New Jersey vs. Yard, 95 U. S., 104, it appeared that the State of New Jersey passed a statute to the effect that the tax of one-half of one per cent. upon net earnings of the Company should be in lieu and satisfaction of all other taxation, provided, however, that the Company should by an instrument under seal signify its assent to the terms of the statute. The statute provided that it should not go into effect until such assent was given. Here was a contract entered into between the railroad company and the State of New Jersey based upon a valuable con-

sideration. The Court will notice particularly that this case was cited and distinguished in the City of Rochester vs. Rochester R'way Co., 182 N. Y., 99; affirmed 205 U. S., 236.

In the Court of Appeals the Court says:

"Here lies the distinction between this case and that of New Jersey v. Yard (95 U. S., 104). In the case cited the Statute of New Jersey required the written acceptance of its terms by the company or else it became wholly inoperative. It is to be further noticed that there was no provision in the New Jersey Constitution similar to that in ours, which reserved the unqualified right to alter or repeal charters, and the decision proceeded in part on this last ground. It is also settled that neither corporations nor individuals have a vested right that the law shall continue to be unchanged."

The next case cited is Wilmington R. R. Co. vs. Reid, 13 Wall., 264.

In that case it appeared that the special Charter granted to the railroad company by the State of North Carolina in 1833 was in its nature a contract between the State and the Company, and this contract was protected by the Constitution.

That case is not in point. There was no special charter granted to the Troy Union Railroad Company. If there had been, then the case

cited would not be authoritative, because of the provision of the New York State Constitution of 1846.

The next case cited is Humphrey vs. Pegues, 16 Wall, 244. That was a case of an exemption contained in a special charter. The effect of the legislation was exactly that, as will be seen by reference to the case of Pearsall vs. Great Northern, 161 U. S., 646, 662, this Court stating in effect that every valuable privilege given by a charter and which conduced to an acceptance of it and an organization under it, is a contract that cannot be changed by the Legislature where the power to do so is not reserved in the charter. The Court might have added "or provided for in the State Constitution."

The other cases cited when they come to be examined will be found to contain either an express contract for exemption or else are cases in which special charters were granted which have been held to be irrevocable contracts. It was to change the law in this respect that Article 8, Sec. 1 of the New York State Constitution of 1846 was drawn.

There is no possible escape from the conclusion that if the exemption to the Troy Union Railroad Company could be construed to be by virtue of a special charter, the Legislature had the power to repeal the exemption.

It was clearly the policy of the people by the Constitution of 1846 to put a stop to the granting of irrevocable special privileges to corporations by means of special charters, and were it necessary to the decision of this case I should urge that it was not within the power of the Legislature to grant, either by special charter or by contract, an irrevocable exemption.

No irrevocable charter can now be granted. A special contract for tax exemption is no more sacred as a contract than a special charter. If the tax exemption were contained in the original "charter" of the relator it could be repealed, even though such charter were in its nature a contract founded on a valuable consideration. If the Act of 1853 were founded on a consideration then it would be in its nature an addition to the relator's general charter—it would be in its nature an element of a "special charter" and subject to repeal under the Constitution of 1846. Section 18 of Article III of the Constitution of 1846 added Nov. 3, 1874, made it impossible thereafter to enact a valid special exemption statute.

IV.

Assuming that the Exemption Act of 1853 is in force, nevertheless the interest of the New York Central & Hudson River Railroad Co. (and of the other companies) is taxable at its full value.

The four railroad companies named acquired in 1858 title to nine-tenths of the property assessed by virtue of section seven of the contract of 1858—Finding 7, page 240. Printed in full page 94; original 165. The exemption was not transferable.

The Tax Law, Chapter 62, Laws of 1909, Sec. 2, subdiv. 3, defines "land," "real estate" and "real property." The definition covers the interests of the railroad companies in the property in question.

Section 3 of the Tax Law provides that "all real property within this State * * * is taxable unless exempt from taxation by law."

The interest of the N. Y. C. & H. R. R. Co., for example, in the lands in question is a freehold estate. Its interest is real estate as that term has been defined under Real Estate Statutes and under the common law.

"The term 'real estate' used in the Statute of 1814 and in the Revised Statutes, includes every freehold estate and interest in lands—that is an

estate in fee or for life. By I Rev. Stat. 754, Sec. 27, it is declared to include every estate, interest and right, legal and equitable, in lands, tenements and hereditaments, except such as are determined or extinguished by the death of an intestate seized or possessed thereof, or in any manner entitled thereto, and except leases for years and estates for life of another person. This is but an elaboration of the common law definition of the term (3 Kent's Com. 401; Merry vs. Hallet, 2 Cow., 497).

Jenkins vs. Fahey, 73 N. Y., 355, 362.

For various purposes under the Real Property Law real estate is today defined in practically the same terms.

Real Property Law, Sec. 2 (Chap. 52, Laws 1909).

See also Sec. 290 Real Property Law.

The contract of 1858 is in effect a conveyance of an undivided nine-tenths of the real estate formerly owned by the Troy Union Railroad Company.

"Whether an instrument shall be treated as a conveyance of land or as an executory contract for a conveyance, depends upon the intention of the parties as gathered from all the language used, read in the light of all the circumstances * * *."

Tamsen vs. Shaefer, 108 N. Y., 604, 609.

If the contract be treated not as a conveyance *in presenti*, but only as a contract of sale, yet nevertheless the four railroad companies, having entered into possession of the property and having expended large sums of money to maintain it, are as between themselves the owners of the land. This ownership is an ownership in fact, sometimes termed equitable ownership.

Williams vs. Haddock, 145 N. Y., 144.

See opinion of Mr. Justice Field in Pollock vs. Farmers L. & T. Co. and Hyde vs. Con. T. Co., 157 U. S., at pages 589, 590.

Such an interest is property that is transferable and descendible and is a taxable interest.

See also Hays vs. Miller, 6 Hun, 320, 326.

Under the common law no particular technical words are necessary to constitute a valid grant. Any words sufficiently indicating the intention of the parties to such effect will operate as a grant.

4 Kent's Commentaries, 491 and 492.

It is not necessary that a deed should contain all the formal parts usual to deeds. It is sufficient

that the matter written is legally and orderly set forth by words which clearly specify the agreement and meaning of the parties and bind them.

2 Blackstone's Commentaries, 298.
Bowdoin College vs. Merritt, 75 Fed. Rep. 480.

The intention of the parties controls in the construction of the instrument.

Cyclopedia of Law and Procedure (13 Cyc.) Vol. 13, page 601.

In the construction of a contract the intention of the parties is to be sought in the words used. If the words are free from ambiguity and express plainly the purpose of the instrument, there is no occasion for interpretation. Contracts are to be read and understood according to the natural and obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending their operation. Courts cannot correct suspected errors, omissions or defects or by construction vary the contracts of parties. If the words employed convey a definite meaning and there is no contradiction or ambiguity in the different parts of the same instrument, then the apparent meaning of the instrument must be regarded as the one intended.

Schoonmaker vs. Hoyt, 148 N. Y., 425, 431.

We are to place ourselves as nearly as may be in the position of the author of the instrument and consider the facts surrounding him with his knowledge or ignorance of facts and with his belief as to the facts, and in that position we may often see clearly the meaning of language otherwise obscure.

Reynolds vs. Commerce Fire Ins. Co., 47 N. Y., 597, 606.

If the intent of the parties appears to be that the land shall pass, the form or mode of the conveyance is not material.

Jackson vs. Dunsbagh, I Johnson's Cases, 91.

In the construction of deeds and other instruments the intention of the parties governs. Only when the **language is ambiguous** the Court may call in aid the acts done under it as a clue to the intent of the parties.

Steinbach vs. Stewart, 11 Wall., 566.
Philadelphia W. Co. vs. Trimble, 10 Wall., 367.

And many other cases.

French vs. Carhart, 1 N. Y., 96.
Mount vs. Hambley, 33 App. Div., 103.

The fact that the City never attempted to assess this property as against the constituent companies is not binding upon the Court as a practical aid to the interpretation of the contract, because: (1) The contract is free from ambiguity. There can be no question as to the meaning of the words used. (2) The neglect of the Assessors to make the assessment during all the years in question does not amount to a construction by the City contrary to the construction now claimed, for such omission of the Assessors is itself ambiguous. The omission may have resulted from a misunderstanding as to the law. It may have been supposed that the exemption conferred by the Statute of 1853 "went with the land." It is not as though during the years in question the relator had been claiming that under the contract of 1858 it remained the sole owner of the entire property, with the city agreeing in that construction. In order that the acts of a party under a contract shall be used as an aid to the Court in the construction thereof, two conditions must exist. (1) The contract must be ambiguous. (2) Under it there must have been a claim of right made by one party and acquiesced in by the other.

In the case at bar we have simply the fact that the Assessors omitted to assess against the companies their undivided interest in the real estate in question, but did assess the property as though all the taxable interest therein were owned by the Troy Union Railroad Company. But

there is no evidence whatever that any of the companies had claimed that this should be done in spite of the provisions of the contract of 1858. It does not appear that the contract of 1858 was before the Assessors at the times the assessments against the Troy Union Railroad Company were made. There is an analagous principle which is applied in the case of title to real estate by adverse possession. One does not lose title to real estate simply by neglecting to assert it. There must in addition be an adverse claim under color of title. In the case at bar there has been on the part of the City simply a neglect to assert its rights. Exemption from taxation surely cannot be acquired by a failure of Assessors to discover taxable property, however long that failure may have continued.

The cases cited by the learned counsel for the relators are in harmony with this.

In Nicoll vs. Sands, 131 N. Y., 19, there was doubt as to the construction of the contract, and it was construed to be in accordance with the unmistakable acts of the parties made with reference thereto.

In Woolsey vs. Funke, 121 N. Y., 89, 92, the Court says:

"But if I am not clearly right in this interpretion of the language, it must at least be admitted, as it seems to me, that the language is somewhat

ambiguous or indefinite. Under such circumstances the practical interpretation of this agreement by both parties is a consideration of very great importance."

Again, in Sattler vs. Hallock, 160 N. Y., 291, 301, the Court says:

"If this contract is to be regarded as somewhat indefinite or ambiguous, we may resort to the surrounding facts and circumstances as they existed when it was made to aid us in its interpretation and also consider the practical construction which the parties have given it. Its interpretation by them is a consideration of importance."

The acts of the Troy Union Railroad Company in holding meetings, conducting and managing the property, insuring it in its own name, etc., are all acts consistent with, or provided by, the contract of 1858, excepting only the insurance. As to this one item the Troy Union Railroad Company continued to have an insurable interest in the property, and it was not to its advantage or to the advantage of the other railroad companies that it should make public the rights of the other railroad companies acquired under the contract of 1858.

It was for the convenience of the four railroad companies that the entire management of the property owned in common should be in the hands of their agent, the Troy Union Railroad

Company. That was a part of the scheme, and of course is not at all inconsistent with the transfer of the title. The Troy Union Railroad Company could have occupied the properties and managed the same without being owner.

The contract of 1858 expressly provided that the Troy Union Railroad Company might continue, maintain and operate the railroad as then located and constructed (Sec. 1, Contract of 1858) and that the Troy Union Railroad Company might continue to occupy the land on each side of Sixth Street for a passenger house.

(Second paragraph Contract of 1858)
page 92 et seq.

It is to be observed that the Appellate Division of the Supreme Court affirmed the order of the Special Term on the opinion of Mr. Justice Chester sitting at Special Term (People ex rel. vs. Mealy, 179 App. Div., 951, fourth title on that page).

Mr. Justice Chester's opinion is to be found at page 291 et seq. Transcript of Record. He held distinctly that under the contract of 1858 a freehold estate passed to the constituent railroad companies (Page 300; original 523).

Unless it may be clearly seen that this was an erroneous conclusion of the Supreme Court of the State of New York, whatever might be the

view of this Court with respect to the validity of the repealing act of 1909, the order appealed from should be affirmed.

> Southern Wisconsin R. Co. vs. City of Madison, 240 U. S., 457.

In a case like the present one this Court maintains its jurisdiction but it may affirm the judgment of the State Court upon the ground that the exemption under the Act of 1853 was lost by the transfer of title under the contract of 1858.

> Douglas vs. Kentucky, 168 U. S., 488. See Note to Osborne vs. Clark, 204 U. S., 565, contained in Lawyers' Edition at page 619 et seq.

This Court having acquired jurisdiction necessarily must inquire into the sufficiency of a non-Federal ground upon which the State Court might well have based its decision.

> Arkansas Southern R. Co. vs. L. & A. R. Co., 218 U. S., 431.

Of course the non-Federal question must be in the case and the facts in connection therewith must have been found. In other words, this judgment rests upon two foundations:

1. There was no contract. Hence there was no impairment.

2. Even though there were a contract the Troy Union Railroad Company deliberately conveyed away its rights to exemption under the contract.

Both grounds are found in th findings of the Court at Special Term. The former presents a Federal question; the latter does not.

The Court of Appeals found that the Act of 1853 formed no part of a contract; that it was merely a privilege granted by the Legislature and could be repealed. It did not pass upon the non-Federal question. The Appellate Division however affirmed the decision of Judge Chester, and it will appear from the memorandum printed (179 App. Div., 951) that the affirmance was upon the opinion of Justice Chester at Special Term. Turning to his opinion (print No. 300) it will be seen that the Conrt held that the contract of 1858 was sufficient to pass a taxable interest in real estate. The Court did not undertake to define that interest but did characterize it as a freehold estate. The same Justice found as a fact that the contract of 1858 was executed (print No. 240, Finding 7); and as a conclusion of law the Court found (print No. 245) that the railroad companies did not acquire a fee simple absolute title but did acquire a taxable freehold estate as tenants in common to the extent of an undivided nine-tenths thereof.

If it be said that this cannot be urged in the

proceeding instituted by the Troy Union Railroad Company, then I answer that the Troy Union Railroad Company cannot secure a cancellation of the assessment in question which was levied against this railroad property if it should appear that the other railroad companies had a taxable freehold interest therein, for the assessment was against not the Troy Union Railroad Company as sole owner but was against the property, and all having a freehold interest therein were designated in the assessment itself. It must therefore be heard on behalf not alone of itself but of all the others interested. What difficulty there is in this connection arises out of the fact that improperly separate proceedings were instituted—one by the Troy Union Railroad Company and another by the New York Central Company. This technically was improper; separate proceedings would not have been deemed to be maintainable if they had been objected to. The proceedings should have been by all who were interested.

This is not important however as the two cases were heard together (print No. 3; original 2). The assessment was upheld so far as the New York Central Company is concerned (print No. 307; original 539).

The New York Central Company appealed to the Court of Appeals (page 308; print 541). Both cases were heard together in the Court of Appeals (page 320; original 562). The order

in both cases was affirmed (page 1 and page 320; original 562 et seq.). So far as appears from the case the other constituent companies did not take any proceedings to vacate the assessment. The New York Central did not apply for a writ or error. The writ was applied for only by the relator. Hence it follows that the record shows that so far as the constituent railroad companies are concerned the assessment against the property in which they have a taxable interest has been affirmed. In that determination the relator, the Troy Union Railroad Company, has no possible financial interest inasmuch as the taxes are not paid by it but are paid by the constituent companies (page 244; original 424).

The situation then is that as to the constituent companies that pay the taxes there is a final order in the case sustaining the assessment. No one of the constituent companies is before this Court complaining of this final disposition of the case.

It follows that no judgment can be rendered declaring the assessment invalid.

V.

The relator is estopped from denying that title passed

"If in making a contract the parties agree upon or assume the existence of a particular fact as a basis of their negotiations, they are estopped to deny the fact so long as the contract stands."

Estoppel, 16 Cyc., 719.
Hathaway vs. Payne, 34 N. Y., 92, 109, and cases cited.

Assuming that the representation as to ownership refers to a title to become perfected in the future nevertheless there is an estoppel, for there is the intended abandonment by the Troy Union Railroad Company of an existing right. There is an intended abandonment by the City of Troy of an existing right—to wit, to prosecute the foreclosure suit and accomplish a sale of the property. The intended abandonment by the Troy Union Railroad Company of an existing right was made to influence the City. Upon it the City was induced to act in the settlement of its suit.

The prosecution of the suit to a sale of the property would have ended the exemption.

Union Mutual Life Ins. Co. vs. Mowrey, 96 U. S., 544.

The language used in section seven of the contract of 1858—to wit, "The New York Central Railroad Company and the Hudson River Railroad Company, **shall each own,**" etc., must mean "shall, from this time forth, own," etc. (page 94; original 165).

It is perfectly plain that as between themselves the parties agreed that from the time of the execution of the instrument the parties shall be tenants in common, according to the shares therein set forth.

It is impossible that the parties should have intended by this section to refer merely to ownership in the capital stock of the Troy Union Railroad Company. This is demonstrable.

The provisions in the contract concerning the capital stock of the Troy Union Railroad Company is the fourteenth section. That provides that the stock of the Troy Union Railroad Company should belong one-fourth part to the New York Central, one-fourth part to the Hudson River, **one-fourth** part to the Rensselaer & Saratoga and **one-fourth** to the Troy & Boston.

Under the agreement the Troy & Boston Railroad Company for example was the owner of one-fourth of the capital stock of the Troy Union Railroad Company, but it was the owner of one-fifth of the real estate formerly the property of the Troy Union Railroad Company.

By the terms of the agreement the effect was this:

Assume that the property is worth $1,000,000. $500,000 of it is owned by the New York Central & Hudson River Railroad Company, $100,000 of it is owned by the Troy Union Railroad Company. The New York Central & Hudson River Railroad Company is the owner of one-half of the capital stock of the Troy Union Railroad Company. If the affairs of the Troy Union Railroad Company were wound up, the New York Central would thus be entitled to $550,000.

The Delaware & Hudson Company would have one-fifth of the real estate—to wit, $200,000; and because it is owner of one-fourth of the capital stock of the Troy Union Railroad Company, it would be entitled to one-fourth of the property of the Troy Union Railroad Company, which would amount to $25,000. Thus its total holdings would be $225,000.

The Boston & Maine Railroad Company would likewise be entitled to $225,000.

Under the contract in case the affairs of the Troy Union Railroad Company were liquidated, and in case the entire property brought just $1,000,000, it would be divided thus:

New York Central & H. R. R. Co. $550,000
D. & H. Co. 225,000
B. & M. R. Co. 225,000

This demonstrates that it was not the interest of the New York Central Railroad Company as a stockholder of the Troy Union Railroad Company that was in mind when its ownership in the passenger house, etc., was provided for. It was not the intention of the parties that it was the interest of the Troy & Boston Railroad Company, for example, as a stockholder of the Troy Union Railroad Company that was provided for when it was declared that the Troy & Boston Railroad Company should own an undivided one-fifth of the passenger house, etc. It was clearly the intention of the parties that while the New York Central Railroad Company and the Hud. R. R. Co. should not be majority owners of the stock, they should be majority owners of the railroad property. There was reason for this at the time. Default had been made under the contract of 1852 by at least one of the roads. Default might be made again. It might be necessary to foreclose the mortgage. It might be necessary to appoint a receiver in the foreclosure suit, in which case it would be important to the two companies to be majority owners. That may be a reason for the provision.

Various guesses have been made as to the reason for this section—whatever its legal import. I have a suggestion which has occurred to me upon a recent reading of section 8 of the contract. It must be borne in mind that there had been default by the Troy Union R. Co. and its constituents on the mortgage and agreements

given to the city. A foreclosure action had been brought. To settle it the Contract of 1858 was made. Naturally the city wished to be fully protected in case of any future default. In addition to the right to foreclose the mortgage the city desired to have the summary right to prevent any defaulting company from using and enjoying the properties. So it was arranged that as between all the parties to the Contract of 1858 the title to the real estate itself should vest in the **five companies** as tenants in common. Then if any one company defaulted the city would take over to itself the title and interest of the company in the railroad properties and then as **owner** exclude by injunction the defaulting company from all use and enjoyment of the tracks, passenger house, etc. To accomplish this Section 7 was drawn. Then follows Section 8 which provides for just such vesting of title in the city together with the right in addition to other legal remedies to exclude by injunction the defaulting company. This required title in the city.

Note the language of Section 8: "And thereupon its title and interest in said Union Railroad" (not **Company**) "shall vest in the City of Troy. And the City of Troy in addition to all other legal remedies may apply to the proper Court for an injunction order to restrain such railroad so in default from using the Troy Union Railroad Company's tracks, passenger house and other property," etc. (Page 94; original 165).

VI.

The exemption granted by the Act of 1853 did not pass to the four railroad companies

Morris Co. vs. Baird, 239 U. S., 126.

Immunity from taxation is not transferable. It is a personal privilege. It cannot be transferred without express statutory direction.

Pickard vs. East Tennessee, Virgina & Georgia R. Co., 130 U. S., 637.

Courts are astute to seize upon evidence tending to show that exemptions were not originally intended or that they have become inoperative. An exemption does not pass to a lessee, but is limited strictly to the grantee of the exemption unless a contrary intention clearly appears.

City of Rochester vs. Rochester R. Co., 182 N. Y., 99, 113. Affirmed 205 U. S., 236.

When in 1858 it was agreed that as between the parties nine-tenths of the real estate then owned by the Troy Union Railroad Company should thereafter be owned by the four railroad companies in question, the exemption granted to the Troy Union Railroad Company in 1853 did not pass to them.

In addition to the foregoing authorities upon this point, see the following cases:

Trask vs. Maguire, 18 Wallace, 391.
Shields vs. Ohio, 95 U. S., 319.
Maine Central R. Co. vs. Maine, 96 U. S., 499.
A. & G. R. Co. vs. Georgia, 98 U. S., 359.
L. & N. R. Co. vs. Palmes, 109 U. S., 244.
M. & L. R. Co. vs. R. R. Comrs., 112 U. S., 609.
St. L., I. M. & S. R. Co. vs. Berry, 113 U. S., 465.
K. & W. R. Co. vs. Missouri, 152 U. S., 301.
N. & W. R. Co. vs. Pendleton, 156 U. S., 667.
Y. & M. V. R. Co. vs. Adams, 180 U. S., 1.
G. R. & I. R. Co. vs. Osborne, 193 U. S., 17.
S. A. T. Co. vs. Atgeld, 200 U. S., 304.

VII.

The interest of the four railroad companies (now three railroad companies) is assessable as a perpetual lease

Section 3, Chapter 255 of the Laws of 1851 provides that the four railroad companies therein named may on equal terms and with equal privileges use the railroad tracks authorized by that Act to be constructed, and Section 5 of the agreement of 1858 provides that the four railroad companies shall have equal rights and privileges in the track, passenger house and other property of the Troy Union Railroad Company without restriction, except such reasonable and uniform rules, regulations and rent charges for offices as the Troy Union Railroad Company may from time to time prescribe therefor.

These provisions amount to a perpetual lease to the railroad companies of all the real estate of the Troy Union Railroad Company. So that even if it should be held that the technical interest of the relator is that of owner, yet nevertheless it must be held that the relator has granted a perpetual lease to the constituent companies. This is real estate and is taxable as such.

It is a freehold estate (Sec. 33 Real Property Law) and is real estate and descendible as such (Sec. 290 Real Property Law).

See Fowler's Real Property Law. Second Edition, page 177.

A transfer by a perpetual lease destroys exemption from taxation as effectually as a technical conveyance of the fee. In practical effect it is a transfer of the fee. It has been held distinctly that an exemption does not pass to a lessee.

City of Rochester vs. Rochester R. Co., 182 N. Y., 99. Affirmed 205 U. S., 236.

For the sake of argument, suppose that the relator's interpretation of Section 7 of the Contract of 1858 be adopted. Suppose it be admitted that the parties to the instrument were looking to the future only and that they agreed that when the Troy Union Railroad Company should cease to be, the New York Central & Hudson River Railroad Company should have a fractional advantage in the ownership of the real estate in question. Suppose it be admitted that it was not intended that present title to the fee should pass by the instrument of 1858.

What rights, then, did the four railroad companies get under the contract of 1858? Merely the rights of stockholders? Surely not.

I may be a stockholder in a corporation but that does not give me the right to use the real estate of the corporation.

The rights acquired under Chapter 255 of the Laws of 1851 and under the contract of 1858 were to use "on equal terms and with equal privileges the railroad track or tracks authorized to be constructed." As provided in the fifth clause of the agreement of 1858, the four railroad companies "shall each have equal rights and privileges in the track, passenger house (the separate rooms therein as now occupied) and other property of the Troy Union Railroad Company * * * without restriction except such reasonable and uniform rules, regulations and rent charges for offices as the Troy Union Railroad Company may from time to time prescribe."

Here is granted the perpetual right to use all this property.

Every possible right that ownership in fee would confer is granted to these companies. If one of them occupies offices in the station and the others do not, that one ought to pay rent to the others. If they all occupy equal space, then they all pay rent into the common pool, which in turn is divided pro rata. The result is that the use of the station and the tracks is on equal terms and without restriction.

Suppose that an effort should be made to exclude one of these railroads from the use of the tracks. That company would immediately resist and claim that it was entitled to the use of the property by virtue of the statute of 1851

and the contract of 1858, and its claim would be sustained.

This right to use perpetually this property is real estate. It is a freehold estate and as such is taxable, irrespective of the question as to where the technical title in fee simple absolute may be found.

Surely the conduct of the parties has been consistent with this view of the case. The Troy Union Railroad Co. is a railroad corporation in name only. The constituent companies have occupied, possessed and used without restriction this entire property. They have a right to use it perpetually.

On one occasion the relator claimed as follows:

"What was meant in Section 7 as to ownership was the ownership as between the four companies when the Troy Union Railroad Company ceased to exist or conveyed the property to them. Until that time the Troy Union Company was to remain the owner and in possession of the property."

And again:

"If, however, the Troy Union Company ceased to exist and the property was taken over by the four companies, the relative import-

ance of the New York Central & Hudson River was intended to be provided for by what was contained in Section 7. But for that section the four roads would share equally in the division because of their equality of stock."

My answer to this is two-fold.

1. The Troy Union Railroad Company was not to remain in possession of the property and did not remain in possession of it, but on the contrary the property was al paid for by the separate railroad companie and its use, possession and enjoyment was granted to them both by the Statute of 1851 and the contract of 1858.

2. If the provision of Section 7 was intended as a grant to take effect in the future, then there was created a future estate in this land in addition to the right to occupy, possess and use it. Such a future estate was at the time of its creation an estate of inheritance and was thus properly to be termed a fee simple or fee. It was vested and not contingent because upon the ceasing of the intermediate estate retained by the Troy Union Railroad Compan, here were persons in being who would have an immediate right to the possession of the lands. This follows necessarily from the provisions of the Revised Statutes in force when this contract of 1858 was entered into. (See Revised Statutes, Title 2, Art. I, Part 2, Chapt I, Secs. 1-13, both inclusive.)

Even, therefore, under that interpretation one must conclude that a fee was granted by the contract of 1858, although that fee might not be a fee simple absolute. The moment however it is admitted that there was an interest in this land created by the contract of 1858 amounting to a fee, that moment it must be admitted that that interest is taxable.

If the purpose of the agreement was simply to provide for the ultimate division of the property in the event of the dissolution of the Union Company, the simple method would have been by an appropriate division of the capital stock. But more than this was in the minds of the parties—for it was expressly provided that the interests of the four Companies should be subject to the lien of the mortgage then in existence.

The Court's attention is called to Jetton vs. University of the South, 208 U. S., 489.

VII.

As to form of assessment

Adding in an assessment to the name of an owner the names of others not owners does not invalidate an assessment if the property is so described that its identity is established. The reason for this rule is that the proceeding to reach the real estate is *in rem.* Moreover by the special charter of the City of Troy it is provided "No assessment hereafter made in said city shall be held to be invalid * * * for any cause arising through ignorance or mistake as to the name of the owner or owners of the property assessed, whether an individual or a corporation provided that such property is sufficiently described on the assessment-rolls to identify and indicate the particular property which it was intended to assess."

Sec. 1, Title VII, Chap. 670, Laws of 1892. Also Sec. 9 of the Tax Law as amended by Chap. 315, Laws 1911 reads: "Real property shall be assessed in the tax district in which it is situated. In all cases the assessment shall be deemed as against the real property itself, and the property itself shall be holden and liable to sale for any tax levied upon it."

See also Sec. 161, Chap. 55, Laws 1909 (State of New York).

It is respectfully submitted that the order be affirmed or the writ be dismissed, with costs.

Dated March 25, 1920.

THOMAS H. GUY,
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of Counsel.